



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

8:30 AM, WEDNESDAY, SEPTEMBER 20, 2023

Barnes Sawyer Rooms - Deschutes Services Building - 1300 NW Wall Street – Bend
(541) 388-6570 | www.deschutes.org

AGENDA

MEETING FORMAT: In accordance with Oregon state law, this meeting is open to the public and can be accessed and attended in person or remotely, with the exception of any executive session.

Members of the public may view the meeting in real time via YouTube using this link: <http://bit.ly/3mmlnzy>. To view the meeting via Zoom, see below.

Citizen Input: The public may comment on any topic that is not on the current agenda. Alternatively, comments may be submitted on any topic at any time by emailing citizeninput@deschutes.org or leaving a voice message at 541-385-1734.

When in-person comment from the public is allowed at the meeting, public comment will also be allowed via computer, phone or other virtual means.

Zoom Meeting Information: This meeting may be accessed via Zoom using a phone or computer.

- To join the meeting via Zoom from a computer, use this link: <http://bit.ly/3h3oqD>.
- To join by phone, call 253-215-8782 and enter webinar ID # 899 4635 9970 followed by the passcode 013510.
- If joining by a browser, use the raise hand icon to indicate you would like to provide public comment, if and when allowed. If using a phone, press *6 to indicate you would like to speak and *9 to unmute yourself when you are called on.



Deschutes County encourages persons with disabilities to participate in all programs and activities. This event/location is accessible to people with disabilities. If you need accommodations to make participation possible, call (541) 388-6572 or email brenda.fritsvold@deschutes.org.

Time estimates: The times listed on agenda items are estimates only. Generally, items will be heard in sequential order and items, including public hearings, may be heard before or after their listed times.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

CITIZEN INPUT: Citizen Input may be provided as comment on any topic that is not on the agenda.

Note: In addition to the option of providing in-person comments at the meeting, citizen input comments may be emailed to citizeninput@deschutes.org or you may leave a brief voicemail at 541.385.1734.

CONSENT AGENDA

1. Approval of Resolution 2023-054 to effect budget changes relating to appropriating \$5,905 for the Spay and Neuter Grant Program awards
2. Approval of Resolution No. 2023-055, converting 3.0 limited duration FTEs to regular for Public Health response and recovery efforts
3. Consideration of Board Signature on letter thanking Jim Getchell for his service on, and letter appointing Mark Dietz to, the Newberry Estates Special Road District
4. Approval of minutes of the BOCC August 14, 16 and 21, 2023 meetings

ACTION ITEMS

5. **8:40 AM** [Request to add 0.2 regular FTE to Health Services for language access work](#)
6. **8:50 AM** [Grant from Natural Resources Conservation Service for Oregon Living With Fire](#)
7. **9:05 AM** Public Hearing: Mountain View Petition to Incorporate
8. **11:05 AM** AJ Tucker Building Removal

OTHER ITEMS

These can be any items not included on the agenda that the Commissioners wish to discuss as part of the meeting, pursuant to ORS 192.640.

EXECUTIVE SESSION

At any time during the meeting, an executive session could be called to address issues relating to ORS 192.660(2)(e), real property negotiations; ORS 192.660(2)(h), litigation; ORS 192.660(2)(d), labor negotiations; ORS 192.660(2)(b), personnel issues; or other executive session categories.

Executive sessions are closed to the public; however, with few exceptions and under specific guidelines, are open to the media.

ADJOURN



BOARD OF
COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 20, 2023

SUBJECT: Approval of Resolution 2023-054 to effect budget changes relating to appropriating \$5,905 for the Spay and Neuter Grant Program awards

RECOMMENDED MOTION:

Move approval of Resolution 2023-054 transferring contingency within the General Fund and increasing appropriations in the General Fund and the Dog Control Fund and the 2023-24 Deschutes County Budget for the Spay and Neuter Grant Program awards.

BACKGROUND AND POLICY IMPLICATIONS:

On August 16, 2023, Deschutes County Administrative staff presented to the Board of County Commissioners with regards to the 2023 Spay & Neuter Grant Program award recommendations. The Board approved an award of \$5,905 from the General Fund; therefore, a budget adjustment is necessary to increase General Fund transfers out to the Dog Control Fund and reduce General Fund contingency by \$5,905 as well as recognize the transfers in revenue and increase program expense in the Dog Control Fund by \$5,905.

BUDGET IMPACTS:

Adjustment will increase General Fund transfers out appropriations by \$5,905 and reduce contingency in the General Fund by the same amount as well as increase program expense by \$5,905 in the Dog Control Fund.

ATTENDANCE:

Dan Emerson, Budget & Financial Planning Manager

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,
OREGON

A Resolution to Increase Appropriations *
Within the 2023-24 Deschutes County Budget * RESOLUTION NO. 2023-054
*

WHEREAS, Deschutes County Administrative staff presented to the Board of County Commissioners on 08/16/23 with regards to the 2023 Spay & Neuter Grant Program award recommendations and the Board approved an award of \$5,905 from the General Fund, and

WHEREAS, ORS 294.463 allows the transfer of Contingency within a fund when authorized by resolution of the governing body, and

WHEREAS, ORS 294.471 allows a supplemental budget adjustment when authorized by resolution of the governing body, and

WHEREAS, it is necessary to increase Transfers Out appropriations by \$5,905 and decrease Contingency by \$5,905 within the General Fund to allow for the transfer to the Dog Control Fund, and

WHEREAS, it is necessary to recognize Transfers In revenue and increase Program Expense appropriations by \$5,905 within the Dog Control Fund, now, therefore;

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, as follows:

Section 1. That the following revenue be recognized in the 2023-24 County Budget:

<u>Dog Control</u>	
Transfers In – General Fund	\$ 5,905
Total Dog Control	<u>\$ 5,905</u>

Section 2. That the following expenditures be budgeted in the 2023-24 County Budget:

<u>General Fund – Non-Departmental</u>	
Contingency	\$ (5,905)
Transfers Out	\$ 5,905
General Fund – Non-Departmental Total	<u>\$ 0</u>
<u>Dog Control</u>	
Program Expense	\$ 5,905
Total Dog Control	<u>\$ 5,905</u>

Section 3. That the Chief Financial Officer make the appropriate entries in the Deschutes County Financial System to show the above appropriations:

DATED this _____ day of September, 2023.

BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ATTEST:

PATTI ADAIR, Vice-Chair

Recording Secretary

PHIL CHANG, Commissioner

Deschutes County
Budget Adjustment

REVENUE

Item	Line Number	Project Code	Segment 2	Org	Object	Description	Current Budgeted Amount	To (From)	Revised Budget
1				3501450	391001	Transfers In-General Fund	\$ 147,000	\$ 5,905	\$ 152,905
TOTAL							\$ 147,000	\$ 5,905	\$ 152,905

APPROPRIATION

Item	Line Number	Project Code	Segment 2	Org	Object	Category (Pers, M&S, Cap Out, Contingency)	Description (Element-Object, e.g. Time Mgmt, Temp Help, Computer Hardware)	Current Budgeted Amount	To (From)	Revised Budget
1				0019991	491350	Transfers Out	Transfers Out - Dog Control	\$ 147,000	\$ 5,905	\$ 152,905
2				0019999	501971	Contingency	Contingency	12,155,000	(5,905)	12,149,095
3				3501450	450903	M&S	Local Grants	13,000	5,905	18,905
TOTAL								\$ 12,315,000	\$ 5,905	\$ 12,320,905

On August 16, 2023, Deschutes County Administrative staff presented to the Board of County Commissioners with regards to the 2023 Spay & Neuter Grant Program award recommendations and the Board approved an award of \$5,905 from the General Fund; therefore, a budget adjustment is necessary to increase General Fund Transfers Out to the Dog Control Fund and reduce General Fund Contingency by \$5,905.

Fund:	001
Dept:	General Fund
Requested by:	Dan Emerson
Date:	9/20/2023



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 20, 2023

SUBJECT: Resolution No. 2023-055, converting 3.0 limited duration FTEs to regular for Public Health response and recovery efforts

RECOMMENDED MOTION:

Move approval of Resolution No. 2023-055 increasing appropriations and converting 3.0 limited duration FTEs to regular within the 2023-24 Deschutes County Budget.

BACKGROUND AND POLICY IMPLICATIONS:

On August 23 2023, Deschutes County Health Services presented to the Board of Commissioners requesting ARPA contingency funds for Public Health Response & Recovery efforts. Health Services presented an allocation of \$47,552 in OHA COVID funds to support the positions from 12/31/23-6/30/24 and the BOCC supported \$647,000 in ARPA funds to further cover the positions from 7/1/24-12/31/25. This resolution appropriates the OHA COVID funds and would convert 3.0 limited duration FTE to regular duration to continue outreach and support for vulnerable populations and maintain core preparedness and response functions.

BUDGET IMPACTS: Recognizing State Grant revenue and increasing appropriations within program expense in the amount of \$47,522 in the 2023-24 Health Services budget. ARPA funds have been identified and budgeted to cover the cost of 3.0 FTE through 12/31/25.

ATTENDANCE:

Cheryl Smallman, Health Services Business Manager
Laura Skundrick, Management Analyst

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,
OREGON

A Resolution Increasing Appropriations *
And Converting FTE Within the 2023-24 * RESOLUTION NO. 2023-055
Deschutes County Budget *

WHEREAS, the Deschutes County Health Services department presented to the Board of County Commissioners on 8/23/2023, with regards to converting 3.00 limited duration FTE to regular FTE with American Rescue Plan Act (ARPA) funds, and

WHEREAS, the Deschutes County Board of Commissioners allocated \$647,000 in ARPA funds to support these positions, and

WHEREAS, it is necessary to increase appropriations by \$47,522 within Health Services to accommodate this request, and

WHEREAS, ORS 294.471 allows a supplemental budget adjustment when authorized by resolution of the governing body, and

WHEREAS, Deschutes County Policy HR-1 requires that the creation of or increase in FTE outside the adopted budget be approved by the Board of County Commissioners; now, therefore,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, as follows:

Section 1. That the following revenue be budgeted in the 2023-24 County Budget:

<u>Health Services</u>	
State Grant	\$ 47,522
Total Health Services	<u>\$ 47,522</u>

Section 2. That the following amounts be appropriated in the 2023-24 County Budget:

<u>Health Services</u>	
Program Expense	\$ 47,522
Total Health Services	<u>\$ 47,522</u>

Section 3. That the Chief Financial Officer make the appropriate entries in the Deschutes County Financial System to show the above appropriations:

Section 4. That the following FTE be converted from limited duration to regular:

Job Class	Position Number	Type	Duration if Limited Duration	FTE
Health Services Supervisor	2873	Reclassify 1.00 to regular Community Health Specialist III	ARPA will cover position 7/1/24 – 12/31/25	-
Management Analyst	2836	Conversion of 1.00 limited duration to regular duration	ARPA will cover position through 12/31/25	-
Admin Support Specialist	2959	Conversion of 1.00 limited duration to regular duration	ARPA will cover position 7/1/24 – 12/31/25	-
Total FTE				-

Section 5. That the Human Resources Director make the appropriate entries in the Deschutes County FTE Authorized Positions Roster to reflect the above FTE changes.

DATED this _____ day of September 2023.

BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

ATTEST:

PATTI ADAIR, Vice-Chair

Recording Secretary

PHIL CHANG, Commissioner

Deschutes County
Appropriation of New Grant

REVENUE

Item	Line Number	Project Code	Segment 2	Org	Object	Description	Current Budgeted Amount	To (From)	Revised Budget
		HSEMERPREP	HS30109G	2743153	334012		-	23,761	23,761
		HSEMERPREP	HS30110G	2743153	334012		-	23,761	23,761
TOTAL							-	47,522	47,522

APPROPRIATION

Item	Line Number	Project Code	Segment 2	Org	Object	Category (Pers, M&S, Cap Out, Contingency)	Description (Element-Object, e.g. Time Mgmt, Temp Help, Computer Hardware)	Current Budgeted Amount	To (From)	Revised Budget
		HSEMERPREP	HS30109G	2743153	410101	Pers	Contracted Services	-	13,316	13,316
		HSEMERPREP	HS30109G	2743153	420101	Pers	Transfers Out - Health Services	-	6,990	6,990
		HSEMERPREP	HS30109G	2743153	420201	Pers		-	3,263	3,263
		HSEMERPREP	HS30109G	2743153	420401	Pers		-	15	15
		HSEMERPREP	HS30109G	2743153	420501	Pers		-	72	72
		HSEMERPREP	HS30109G	2743153	420601	Pers		-	53	53
		HSEMERPREP	HS30109G	2743153	420801	Pers		-	54	54
		HSEMERPREP	HS30110G	2743153	410101	Pers			13,316	13,316
		HSEMERPREP	HS30110G	2743153	420101	Pers			6,990	6,990
		HSEMERPREP	HS30110G	2743153	420201	Pers			3,263	3,263
		HSEMERPREP	HS30110G	2743153	420401	Pers			15	15
		HSEMERPREP	HS30110G	2743153	420501	Pers			72	72
		HSEMERPREP	HS30110G	2743153	420601	Pers		-	53	53
		HSEMERPREP	HS30110G	2743153	420801	Pers		-	54	54
TOTAL							-	47,522	47,522	

Deschutes County
Appropriation of New Grant

0

Position #2959 converted to regular. January 1, 2024 - June 30, 2024 will be paid out of the above funding; July 1, 2024 - December 31, 2025 will be paid out of ARPA.

Fund:
Dept:
Requested by:
Date:

274
Health Services
Cheryl Smallman
9/13/2023



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 20, 2023

SUBJECT: Add 0.2 regular FTE to Health Services for Language Access work

RECOMMENDED MOTION:

Move approval to add 0.2 regular FTE position within the Health Services Fund.

BACKGROUND AND POLICY IMPLICATIONS:

On December 14, 2022, the Board of County Commissioners approved acceptance of a one-time PacificSource Behavioral Health (BH) Workforce Diversity grant in the amount of \$147,595.40. The goal of this funding is to diversify the workforce so that PacificSource members have increased access to BH providers who are more reflective of the cultures and languages of PacificSource members. Funding from this grant is for the period December 2022 through December 2023. PacificSource has indicated they are willing to extend the term of the funding.

In Oregon, PacificSource members who are Black, Indigenous, or People of Color (BIPOC) or speak languages other than English engage in BH services at lower rates compared to white and English-speaking members, even amongst members diagnosed with a BH condition. Increasing access to a diverse workforce, that reflects member race/ethnic, cultural background and language needs, is an evidence-based strategy known to reduce health disparities and is a key workforce development priority for PacificSource. Additionally, current quality incentive metrics (QIMs) for Central Oregon include a required metric related to improving language access for members, which has increased demand for language services within Health Services.

Health Services is seeking approval to add a 0.2 regular FTE Administrative Support Technician, effective September 1, 2023 to serve as a Language Access Liaison, to a regular 0.8 FTE Administrative Support Technician position (#2260). The position will provide translation and in-person interpreting, coordinating interpreting and translation services provided through vendors, and advocating for health equity and linguistically appropriate and culturally competent service provisions. This work has been partially performed by a qualified employee who is now in a 0.8 regular FTE Health Services position in Public Health. That 0.8 will remain dedicated to the Public Health program, and we are requesting

increasing the position to 1.0 FTE, with the additional 0.2 FTE of the position to serve as a Language Access Liaison. PacificSource funding will cover the position through June 30, 2024. Beginning in fiscal year 2025, the position will be funded through departmental indirect charges, and as such, Health Services is recommending that this position be regular instead of limited duration. However, should funding no longer support the increase in the position, DCHS will consider the future of this position within the budgeting process.

BUDGET IMPACTS:

The estimated cost of a 0.2 Administrative Support Technician for 10 months is \$15,145. If approved, an FTE resolution will be forthcoming from Finance. No additional appropriation will be necessary in the Health Services Fund.

ATTENDANCE:

Jillian Weiser, HS Compliance QA Officer
Cheryl Smallman, HS Business Officer



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 20, 2023

SUBJECT: Grant from Natural Resources Conservation Service for Oregon Living With Fire

RECOMMENDED MOTION:

Move approval of Chair signature of Document No. 2023-875, an intergovernmental agreement with the Natural Resources Conservation Service for grant funding for the Oregon Living With Fire program.

BACKGROUND AND POLICY IMPLICATIONS:

Oregon Living With Fire (OLWF) has operated the past six years with fiscal contributions from Crook, Deschutes, Jefferson, and Klamath Counties. Additionally, the Forest Service is providing \$300,000 with an additional intergovernmental agreement for OLWF, which expires in 2028. The Natural Resources Conservation Service has offered an additional grant totaling \$150,000 for five years. With these combined contributions, OLWF will remain financially solvent the next five years.

BUDGET IMPACTS:

\$30,000 revenue for the next five fiscal years, for a total of \$150,000.

ATTENDANCE:

Joe Stutler, Deschutes County Senior Advisor
Jodie Barram, OLWF Co-Coordinator



U.S. Department of Agriculture
Natural Resources Conservation Service



09/20/2023 Item #6.
NRCS-ADS-093

NOTICE OF GRANT AND AGREEMENT AWARD

1. Award Identifying Number NR230436XXXXC016	2. Amendment Number	3. Award /Project Period Date of Final Signature - 07/31/2028	4. Type of award instrument: Contribution Agreement
5. Agency (Name and Address) Natural Resources Conservation Service 1201 NE Lloyd Blvd, Suite 900 Portland, OR 97232		6. Recipient Organization (Name and Address) DESCHUTES COUNTY PO BOX 6005 BEND OR 97708 UEI Number / DUNS Number: SVJRCF7JN519 / 030805147 EIN:	
7. NRCS Program Contact Name: DAMON BROSNAN Phone: (541) 223-1156 Email: Damon.Brosnan@usda.gov	8. NRCS Administrative Contact Name: Marnie Wilson Phone: (801) 844-2916 Email: Marnie.Wilson@usda.gov	9. Recipient Program Contact Name: Jodie Barram Phone: (541) 241-6235 Email: coordinator@oregonlivingwithfire.org	10. Recipient Administrative Contact Name: Joe Stutler Phone: (541) 408-6132 Email: joe.stutler@deschutes.org
11. CFDA 10.902	12. Authority 7 U.S.C 6962a: Contribution CTA IR-PL117-169	13. Type of Action New Agreement	14. Program Director Name: Jennifer Fenton Phone: (541) 281-7092 Email: jenniferfenton5@yahoo.com
15. Project Title/ Description: To work with stakeholders to advance the Cohesive Wildland Fire Strategy across Deschutes, Jefferson, Crook, and Klamath Counties.			
16. Entity Type: B = County Government			
17. Select Funding Type			
Select funding type:	<input checked="" type="checkbox"/> Federal	<input checked="" type="checkbox"/> Non-Federal	
Original funds total	\$150,000.00	\$150,000.00	
Additional funds total	\$0.00	\$0.00	
Grand total	\$150,000.00	\$150,000.00	
18. Approved Budget			

DC - 2023 - 875

Personnel	\$0.00	Fringe Benefits	\$0.00
Travel	\$0.00	Equipment	\$0.00
Supplies	\$0.00	Contractual	\$0.00
Construction	\$0.00	Other	\$150,000.00
Total Direct Cost	\$150,000.00	Total Indirect Cost	\$0.00
		Total Non-Federal Funds	\$150,000.00
		Total Federal Funds Awarded	\$150,000.00
		Total Approved Budget	\$300,000.00

This agreement is subject to applicable USDA NRCS statutory provisions and Financial Assistance Regulations. In accepting this award or amendment and any payments made pursuant thereto, the undersigned represents that he or she is duly authorized to act on behalf of the awardee organization, agrees that the award is subject to the applicable provisions of this agreement (and all attachments), and agrees that acceptance of any payments constitutes an agreement by the payee that the amounts, if any, found by NRCS to have been overpaid, will be refunded or credited in full to NRCS.

Name and Title of Authorized Government Representative Ronald Alvarado State Conservationist	Signature	Date
Name and Title of Authorized Recipient Representative Anthony DeBone Chair, Deschutes County BOCC	Signature	Date

NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

PRIVACY ACT STATEMENT

The above statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. Section 522a).

Statement of Work

Purpose

The purpose of this agreement, between the U S. Department of Agriculture, Natural Resources Conservation Service (NRCS) and Deschutes County (Recipient), is to document the cooperation between the parties for specific watershed restoration, and community protection efforts to meet the intent of the US Congress FLAME Act, and the Vision and Strategic Goals of the Cohesive Strategy as amended in 2023. The specific intent is to use the Oregon Living With Fire (OLWF) to accomplish this purpose.

Objectives

As described, the establishment of Oregon Living With Fire (OLWF) will benefit the mission of the NRSC and address the interests of Deschutes County. The parties have a common interest in improving current watershed health, and fire and fuels conditions within multiple counties in Central Oregon. The establishment of the coordinator will provide a platform to integrate, in a collaborative way, across county lines at a landscape scale, inform and educate our publics of the benefits of the Cohesive Strategy. This includes but is not limited to, land and resource management issues such as forest health and resiliency and watershed enhancement, providing local opportunities for communities to be better informed and prepared for wildland fire in the fire adapted ecosystems and enhance the cooperative wildland fire response in Central Oregon. Specific objectives include the following:

- Network and build relationships with OLWF stakeholders, partners, agencies, and organizations implementing the Cohesive Strategy.
- Facilitate and implement the program of work as determined by Deschutes County, through consultation of the Steering Committee that includes NRSC representation.
- Coordinate steering committee meetings.
- Maintain administrative actives and facilitate the day-to-day business of the OLWF.
- Attend collaborative meetings that support Federal/Local Cohesive Strategy implementation efforts.
- Participate in the monthly meetings for the Western Region of the Cohesive Strategy as a Representative of OLWF.
- Create and maintain an interactive web presence for OLWF, NRCS, the steering committee, as well as stakeholders and public.
- Facilitate development of Learning Laboratories to share experiences, provide local guidance, communicate success stories, and provide opportunities for lessons learned.
- Create and maintain social communications efforts such as Facebook, Twitter, and a regular e-Newsletter to be distributed to partners, cooperators, and the public.
- Document success stories/lessons learned and share with the steering committee, stakeholders, and the public.
- "Tell the Story" of all federal, state, local government, and public stakeholders of why and how the Cohesive Strategy is implemented within the OLWF landscape.
- OLWF will be the strategic convener for cross boundary collaboration.
- Facilitate development of performance measures and monitoring information to assess effectiveness and accountability of OLWF efforts to implement the Cohesive Strategy.
- Attend and present at appropriate conferences and meetings.

Budget Narrative

The official budget described in this Budget Narrative will be considered the total budget as last approved by the Federal awarding agency for this award.

Amounts included in this budget narrative are estimates. Reimbursement or advance liquidations will be based on actual expenditures, not to exceed the amount obligated.

TOTAL BUDGET \$300,000 (\$30,000 PER YEAR) FOR A FIVE-YEAR PERIOD

- TOTAL FEDERAL FUNDS \$ 150,000
- PERSONNEL \$0.00
- FRINGE BENEFITS \$0.00
- TRAVEL \$0.00
- EQUIPMENT \$0.00
- SUPPLIES \$0.00
- CONTRACTUAL \$ 150,000
- CONSTRUCTION \$0.00
- OTHER \$0.00
- TOTAL DIRECT COSTS \$0.00

INDIRECT COSTS \$0.00

TOTAL NON-FEDERAL FUNDS \$150,000
PERSONNEL \$0.00
FRINGE BENEFITS \$0.00
TRAVEL \$0.00
EQUIPMENT \$0.00
SUPPLIES \$0.00
CONTRACTUAL \$150,000
CONSTRUCTION \$0.00
OTHER \$0.00
TOTAL DIRECT COSTS \$150,000
INDIRECT COSTS \$0.00

Recipient has elected to voluntarily waive indirect costs.

FEDERAL BUDGET

Contractual: \$150,000

OLWF Program Coordinator(s): The Coordinator(s) works closely with the Steering Committee and Contract Administrator to accomplish tasks, and with stakeholders, to advance the Cohesive Wildland Fire Strategy across Deschutes, Jefferson, Crook, and northern Klamath Counties. Technical assistance is provided for grant research and writing, meeting facilitation and/or participation, and maintaining a leadership role with direct support of landscape efforts such as Collaboratives, Good Neighbor Authority, Stewardship Agreements and Joint Chiefs Projects.

Annual contracted amount for Program Coordinator(s) scope of work \$156,000 x 19% = \$30,000

YEAR 1

Services provided to four Oregon Counties
12-month contract(s) and service period
Federal Funds Requested: \$30,000

YEAR 2

Services provided to four Oregon Counties
12-month contract(s) and service period
Federal Funds Requested: \$30,000

YEAR 3

Services provided to four Oregon Counties
12-month contract(s) and service period
Federal Funds Requested: \$30,000

YEAR 4

Services provided to four Oregon Counties
12-month contract(s) and service period
Federal Funds Requested: \$30,000

YEAR 5

Services provided to four Oregon Counties
12-month contract(s) and service period
Federal Funds Requested: \$30,000

NON-FEDERAL BUDGET

CONTRACTUAL – TOTAL MATCH \$150,000

OLWF Program Coordinator(s): The Coordinator(s) works closely with the Steering Committee and Contract Administrator to accomplish tasks, and with stakeholders, to advance the Cohesive Wildland Fire Strategy across Deschutes, Jefferson, Crook, and northern Klamath Counties. Technical assistance is provided for grant research and writing, meeting facilitation and/or participation, and maintaining a leadership role with direct support of landscape efforts such as Collaboratives, Good Neighbor Authority, Stewardship Agreements and Joint Chiefs Projects.

YEAR 1

Services provided to four Oregon Counties

12-month contract(s) and service period
Match Funds Provided: \$30,000

YEAR 2

Services provided to four Oregon Counties
12-month contract(s) and service period
Match Funds Provided: \$30,000

YEAR 3

Services provided to four Oregon Counties
12-month contract(s) and service period
Match Funds Provided: \$30,000

YEAR 4

Services provided to four Oregon Counties
12-month contract(s) and service period
Match Funds Provided: \$30,000

YEAR 5

Services provided to four Oregon Counties
12-month contract(s) and service period
Match Funds Provided: \$30,000

Responsibilities of the Parties:

If inconsistencies arise between the language in this Statement of Work (SOW) and the General Terms and Conditions attached to the agreement, the language in this SOW takes precedence.

NRCS RESPONSIBILITIES

NRCS will be an active participant in OLWF meetings and events to coordinate forestry activities, fire education and outreach. NRCS will help to build Conservation relationships within the greater Central Oregon region between Federal entities, local government, and private stakeholders.

RECIPIENT RESPONSIBILITIES

Perform the work and produce the deliverables as outlined in this Statement of Work and Annual Program of Work, which is approved by the OLWF Steering Committee where NRCS is a member.

Comply with the applicable version of the General Terms and Conditions.

Submit reports and payment requests to the ezFedGrants system or the Farm Production and Conservation (FPAC) Grants and Agreements Division via email to FPAC.BC.GAD@usda.gov as outlined in the applicable version of the General Terms and Conditions. Reporting frequency is as follows:

- Performance reports: Quarterly.
- SF425 Financial Reports: Quarterly.

Expected Accomplishments and Deliverables

As described below, what will be done; each deliverable is time sensitive and happens throughout the calendar year and accomplishments will be measured by the OLWF Steering Committee of which NRCS is a member.

Co-Coordinator (Programmatic Focus):

- Schedule and facilitate four (4) Steering Committee, that includes NRCS representation, meetings annually.
- Maintain administrative activities and facilitate the day-to-day business of the OLWF.
- Engage in monthly Deschutes Collaborative Forest Restoration Project (DCFP), Ochoco Forest Restoration Collaborative (OFRC) and Klamath-Lake Forest Health Partnership (KLFHP) meetings that support Federal/Local Cohesive Strategy implementation efforts.
- Ongoing networking building relationships with OLWF stakeholders, partners, agencies, and organizations implementing the Cohesive Strategy.
- Participate in the monthly meetings for the Western Region of the Cohesive Strategy as a Representative of OLWF.
- Participate in the bi-monthly meetings (6) of the Central Oregon Fire Chiefs Association.
- Convene stakeholders for one to two Cross Boundary Collaboration Sessions.

- Host and facilitate one (1) meeting between federal agencies, elected officials, power companies and other interested parties to discuss line maintenance, power safety power shutoffs, etc.
- Host and facilitate Central Oregon Fire Year Briefing in May 2024.
- Specifically connect NRCS to Community Wildfire Protection Plan (CWPP) updates throughout Deschutes County by engaging in the CWPP process, enhancing relationships with private landowners to enable Joint Chief's Projects.
- Attend and possibly present at the Wildland Urban Interface Conference, the Cohesive Strategy Annual Workshop, and the WFLC West Face-to-Face Meeting.
- Plan and implement at least one live prescribed fire tour for stakeholders, elected officials, and media in coordination with the US Forest Service.
- Develop and distribute an annual report.
- Present updates to Crook, Deschutes, Jefferson and Klamath County Boards of County Commissioners at least twice a year.

Co-Coordinator (Grants Focus):

- Research funding and/or co-sponsorship opportunities for local implementation of the National Cohesive Strategy.
- Compile, write, and submit applications for grants like Building Resilient Infrastructure Communities (BRIC), Community Wildfire Defense Grants (CWDG), and others.
- Ongoing networking building relationships with OLWF stakeholders, partners, agencies, and organizations implementing the Cohesive Strategy.
- Participate in the monthly meetings for the Western Region of the Cohesive Strategy as a Representative of OLWF.
- Create quarterly (4) blog posts for the OLWF website, featuring NRCS in at least one blog post.
- Participate in the bi-monthly meetings (6) of the Central Oregon Fire Chiefs Association.
- Support convening stakeholders for 1-2 Cross Boundary Collaboration Sessions.
- Attend meeting between federal agencies, elected officials, power companies and other interested parties to discuss line maintenance, power safety power shutoffs, etc.
- Host and facilitate Central Oregon Fire Year Briefing in May 2024.
- Attend and possibly present at the Wildland Urban Interface Conference, the Cohesive Strategy Annual Workshop, and the WFLC West Face-to-Face Meeting.
- Develop and distribute an annual report.
- Present updates to Crook, Deschutes, Jefferson and Klamath County Boards of County Commissioners at least twice a year.

Resources Required

See the Responsibilities of the Parties section for required resources, if applicable.

Milestones

See the Expected Accomplishments and Deliverables section for milestones.

GENERAL TERMS AND CONDITIONS

Please reference the below link(s) for the General Terms and Conditions pertaining to this award:
<https://www.fpacbc.usda.gov/about/grants-and-agreements/award-terms-and-conditions/index.html>

Rev. November 2022

**U.S. DEPARTMENT OF AGRICULTURE
FARM PRODUCTION AND
CONSERVATION**

**GENERAL TERMS AND CONDITIONS FOR
GRANTS AND COOPERATIVE AGREEMENTS**

The Farm Production and Conservation (FPAC) mission area encompasses the following USDA agencies: Natural Resources Conservation Service (NRCS), Farm Service Agency (FSA), Risk Management Agency (RMA), the Commodity Credit Corporation (CCC), and the FPAC Business Center.

I. APPLICABLE REGULATIONS

- a. As a condition of this award, the recipient assures and certifies that it has and/or will comply and require subrecipients to comply with the requirements contained in the following statutes and regulations, as applicable. The full text of Code of Federal Regulations references may be found at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR> and <http://www.ecfr.gov/>.
1. 2 CFR Part 25, "Universal Identifier and System of Award Management"
 2. 2 CFR Part 170, "Reporting Subaward and Executive Compensation Information"
 3. 2 CFR Part 175, "Award Term for Trafficking in Persons"
 4. 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)"
 5. 2 CFR Part 182, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)"
 6. 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
 7. 2 CFR Part 400, "Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards"
 8. 2 CFR Part 417, "Nonprocurement Debarment and Suspension"
 9. 2 CFR Part 418, "New Restrictions on Lobbying"
 10. 2 CFR Part 421, "Requirements for Drug-Free Workplace (Financial Assistance)"
 11. 2 CFR Part 422, "Research Institutions Conducting USDA-Funded Extramural Research; Research Misconduct"
- b. Allowable project costs will be determined in accordance with the authorizing statute, the purpose of the award, and, to the extent applicable, to the type of organizations receiving the award, regardless of tier. The following portions of the Code of Federal Regulations are hereby incorporated by reference. The full text of Code of Federal Regulations references may be found at

<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>
and <http://www.ecfr.gov/>.

2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards"

- c. For corporate recipients, by accepting this award the recipient acknowledges: (1) that it does not have a Federal tax delinquency, meaning that it is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, **and** (2) that it has not been convicted of a felony criminal violation under any Federal law within 24 months preceding the award, unless a suspending and debarring official of the USDA has considered suspension or debarment of the recipient corporation based on these convictions and/or tax delinquencies and determined that suspension or debarment is not necessary to protect the interests of the Government. If the recipient fails to comply with these provisions, the agency will annul this agreement and may recover any funds the recipient has expended in violation of the above cited statutory provisions.

II. UNALLOWABLE COSTS

The following costs are not allowed:

- a. Profit and management fees. Recipients may not earn and keep income resulting from an award
- b. Costs above the amount authorized for the project.
- c. Costs incurred after the award period of performance end date.
- d. Costs not identified in the approved budget or approved budget revisions.
- e. Costs of promotional items and memorabilia, including models, gifts, and souvenirs.
- f. Compensation for injuries to persons or damage to property arising from project activities.
- g. Meals: Meals may be charged to an award only if they are necessary for the performance of the project. For instance, meals (normally only lunch) that are a necessary part of the costs of meetings and conferences (i.e., required attendance and continuity of a meeting), the primary purpose of which is the dissemination of information, are allowable, as are costs of transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conferences. Note: Meals consumed while in official travel status do not fall in this category. They are considered to be per diem expenses and should be reimbursed in accordance with the organization's established travel policies subject to statutory limitations or in accordance with Federal travel policies.
- h. Costs normally charged as indirect costs may not be charged as direct costs without proper justification and agency approval. Proper justification includes documentation that the costs meet the criteria for allowability (see 2 CFR 200.403). Examples of such costs include rent, utilities, depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.
- i. Salaries that are not commensurate with level of work: All costs must be reasonable

to be allowable (2 CFR 200.403), and 2 CFR 200.404 defines a reasonable cost as one if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. Salaries determined not to be reasonable compared to the level of work will be unallowable.

- j. Honoraria. Speaker fees are allowable.
- k. Costs which lie outside the scope of the approved project and amendments thereto.
- l. Entertainment costs, regardless of their apparent relationship to project objectives.
- m. Consulting services performed by a Federal employee during official duty hours when such consulting services result in the payment of additional compensation to the employee; and
- n. Renovation or refurbishment of facilities, the purchase or installation of fixed equipment in facilities, and the planning, repair, rehabilitation, acquisition, or construction of buildings or facilities.

This list is not exhaustive. For general information about the allowability of particular items of costs, please see 2 CFR Part 200, "Subpart E - Cost Principles", or direct specific inquiries to the administrative contact identified in the award. The allowability of some items of costs may be difficult to determine. To avoid disallowance or dispute of such costs, the recipient may seek prior approval before incurring them. See 2 CFR 200.407.

III. PRIOR APPROVAL REQUIREMENTS

Certain items of cost and award revisions require the prior written approval of the awarding agency. The following are the most common situations requiring prior approval. However, this list is not exhaustive, and the recipient is also bound by any other prior approval requirements identified in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Submit all requests for the approvals described below via e-mail to FPAC.BC.GAD@usda.gov. All requests for prior approval must reference the applicable agreement number.

- a. Pre-award costs.—To receive reimbursement for costs incurred prior to the award date, recipients must request written approval. This restriction also applies to costs intended to meet cost-share requirements. Even with approval, recipients incur pre-award costs at their own risk. The Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover the costs.
- b. Revisions to scope, objective, or deliverables.—When it is necessary to modify the scope, objective, or deliverables of an award, the recipient must submit a written request and justification for the change along with the revised scope, objective, or deliverables of the award.
- c. Additions or changes to subawards and contracts.—The subawarding, transferring, or contracting out of any work (i.e., services) under a Federal award not identified in the original award budget or any changes to subaward or contracts requires prior written approval. The recipient must submit a justification for the proposed subaward/contract, a statement of work to be performed, and a detailed budget for the subaward/contract. This provision does not apply to the acquisition of supplies,

material, equipment, or general support services.

- d. **Permanent change in a key person specified in the award.**—When there is a permanent change in key personnel, such as a project director or principal investigator, the recipient must request prior written approval for the substitution or change. The request must identify the replacement personnel and provide his or her qualifications.
- e. **Absence or temporary change in project leadership.**—If the approved project director or principal investigator disengages from the project for more than three months or reduces time devoted to the project by 25 percent or more, the recipient must request prior approval in writing, identifying who will be in charge during the project director's absence. The notification must include the qualifications of the replacement.
- f. **Budget revisions.**—Recipients must request prior written approval for deviations from the approved budget in the instances described below. For budget revisions, the recipient may be required to submit a new SF 424A or 424C and budget narrative, even those that do not require prior approval.
 - 1. The inclusion of costs that require prior approval in accordance with Subpart E—Cost Principles of this part or 45 CFR part 75 Appendix IX, “Principles for Determining Costs Applicable to Research and Development under Awards and Contracts with Hospitals,” or 48 CFR part 31, “Contract Cost Principles and Procedures,” as applicable.
 - 2. Where the cumulative amount of transfers of funds among direct cost categories or programs, functions, and activities exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency, and where the Federal share of the project exceeds the simplified acquisition threshold. Recipients must notify the Government of budget changes that do not meet the threshold described above.
 - 3. The transfer of funds budgeted for participant support costs to other categories of expense requires prior written approval. Participant support costs means direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences or training projects.
 - 4. Changes in the approved cost-sharing or matching provided by the recipient, including to amount, source, or type.
 - 5. Additional Federal funds needed to complete the project. This change also requires a formal agreement amendment.
 - 6. Changes to negotiated indirect cost rates during the award period of performance. If the change is due to receipt of a new negotiated indirect costs rate agreement (NICRA), the prior approval request must include a copy of the new agreement.
- g. **No-Cost Extensions of Time.**—When a no-cost extension of time is necessary, the recipient authorized signatory must submit a written request via e-mail to FPAC.BC.GAD@usda.gov. Except in limited circumstances, a no-cost extension of time cannot exceed 12 months. FPAC cannot approve requests for no-cost extensions received after the expiration of the award. In addition, time may not

allow extension requests submitted less than 30 calendar days before the period of performance end date to be processed, so recipients are encouraged to submit requests as soon as possible. FPAC agencies cannot approve no-cost extensions requested merely to expend remaining funds. The request must contain the following:

1. Amount of additional time requested
2. Explanation for the need for the extension
3. A summary of progress to date and revised milestones

IV. PAYMENTS

- a. Recipients must request reimbursement or advances using a properly completed and executed SF-270, submitted with a Budget Expense Table or Deliverable Expense Table (or similar summary document), as applicable to either the ezFedGrants system or to FPAC.BC.GAD@usda.gov. Templates for Budget Expense Tables and Deliverable Expense Tables are available at this link: <https://www.fpacbc.usda.gov/about/doing-business/index.html>.
- b. Recipients requesting advances should request payments in amounts necessary to meet their current needs pursuant to procedures contained in the Federal administrative provisions and 31 CFR Part 205. Requests must be submitted no less than 15 days prior to the start of the requested advance period. The recipient must provide a summary document showing the amount of advanced funds spent within 30 days of the end of the advance period. If applicable, the recipient must also submit a summary of the cost-share provided
- c. The method of payment between the recipient and its contractors will be in accordance with the policies and procedures established by the recipient except that the contractors may not use the USDA Office of Financial Management/National Finance Center method to request payments. If the recipient makes advance payments to contractors, the recipient must ensure that the timing of such payments is designed to minimize elapsed time between the advance payment and the disbursement of funds. Recipients must not submit requests from their contractors for review or approval.
- d. The recipient must maintain records of supporting documentation all costs incurred under this award. Such documentation includes, but is not limited to, canceled checks, paid bills, payroll records, and subaward documents. Labor cost charges to this award must be based upon salaries actually earned and the time actually worked on this award. All project costs must be incurred within the period of performance of this award, including any approved no-cost extension of time. The Government may disallow costs that cannot be supported by supporting documentation or that are incurred outside of the agreement period of performance and budget and may require the return of any funds paid out for those costs. The level of detail and documentation required to be provided to support any individual payment request is at the discretion of the Government. Do not provide supporting documentation unless it is specifically requested.
- e. Recipients must pay all costs incurred (i.e., liquidate obligations) under the award

and request all final requests for payment not later than 120 calendar days after the period of performance end date. The Government must timely close-out expired agreements, which includes de-obligation of unspent funds. Therefore, funds may not be available for payment requests received more than 120 days after the period of performance end date, and the Government is not obligated to make such payments.

- f. Payments under fixed-amount awards are made based on deliverables completed, milestones achieved, or as a single payment upon award completion rather than costs incurred. The Government and recipient must utilize 2 CFR 200, Subpart E, Cost principles to support unit prices included in fixed amount awards prior to agreement execution.

V. FINANCIAL REPORTING

- a. Recipients must submit a Federal Financial Report (FFR), SF 425 in accordance with the schedule included in the award statement of work. Recipients must submit reports to either the ezFedGrants system or via e-mail to FPAC.BC.GAD@usda.gov. Failure to submit reports as required may result in suspension or termination of award.
 - b. The recipient must submit a final financial report no later than 120 days after the period of performance end date. Failure to do so may result in a negative report to the Federal Awardee Performance and Integrity Information System (FAPIIS).
 - c. The FPAC awarding agency will withhold payments under this award if the recipient is delinquent in submitting required reports.

VI. PERFORMANCE MONITORING AND REPORTING

- a. The recipient is responsible for monitoring day-to-day performance and for reporting to the FPAC awarding agency. If the project involves subaward/contractual arrangements, the recipient is also responsible for monitoring the performance of project activities under those arrangements to ensure that approved goals and schedules are met.
- b. The recipient must submit a written progress report at the frequency specified in the statement of work to either the ezFedGrants system or via e-mail to FPAC.BC.GAD.usda.gov. Each report must cover—
 1. A comparison of actual accomplishments with the milestones and deliverables established for the reporting period and, where project output can be quantified, a computation of the costs per unit of output.
 2. The reasons why milestones and deliverables targets were not met, if appropriate.
 3. Additional pertinent information including, where appropriate, analysis and explanation of cost overruns or high unit costs.
- c. The recipient must submit a final performance report within 120

calendar days of the period of performance end date. Failure to do so may result in a negative report to the Federal Awardee Performance and Integrity Information System (FAPIIS).

- d. The FPAC awarding agency will withhold payments under this award if the recipient is delinquent in submitting required reports.

VII. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

a. Reporting of first-tier subawards.

- 1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$30,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).
- 2. Where and when to report.
 - i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
- 1. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov>.

b. Reporting Total Compensation of Recipient Executives.

- 1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
 - i. the total Federal funding authorized to date under this award is \$30,000 or more;
 - ii. in the preceding fiscal year, you received—
 - A. 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - B. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange

Commission total compensation filings at
<http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:
 - i. As part of your registration profile at <https://www.sam.gov>.
 - ii. By the end of the month following the month in which this award is made, and annually thereafter.
- c. Reporting of Total Compensation of Subrecipient Executives.
1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
 - i. in the subrecipient's preceding fiscal year, the subrecipient received—
 - A. 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - B. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
 2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:
 - i. To the recipient.
 - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.
- d. Exemptions
- If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:
1. Subawards, and
 2. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:
 - i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization;
 - iv. A domestic or foreign for-profit organization;
 - v. A Federal agency, but only as a subrecipient under an award or subaward to a non- Federal entity.
2. Executive means officers, managing partners, or any other employees in management positions.
3. Subaward:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
4. Subrecipient means an entity that:
 - i. Receives a subaward from you (the recipient) under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried

employees.

- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

VIII. AUDIT REQUIREMENTS

The recipient is responsible for complying with audit requirements in accordance with 2 CFR 200, Subpart F. A recipient entity that expends \$750,000 or more during the recipient’s fiscal year in Federal awards must have a single or program-specific audit conducted for that year. A single audit is required to be uploaded by the recipient to the Federal Audit Clearinghouse within 30 calendar days after receipt of the auditor’s report, or nine (9) months after the end of the audit period, whichever comes first.

IX. SPECIAL PROVISIONS

- a. The recipient assures and certifies that it will comply with the minimum-wage and maximum-hour provisions of the Federal Fair Labor Standards Act.
- b. Employees of FPAC agencies will participate in efforts under this agreement solely as representatives of the United States. They may not participate as directors, officers, employees, or otherwise serve or hold themselves out as representatives of the recipient. They also may not assist the recipient with efforts to lobby Congress or to raise money through fundraising efforts. Further, FPAC employees must report to their immediate supervisor any negotiations with the recipient concerning future employment and must refrain from participation in projects or agreements with such recipients.
- c. Except for agreements entered under the Agriculture Conservation Experienced Services (ACES) program authorized by the Food, Conservation, and Energy Act of 2008, employees of the recipient will not be considered Federal employees or agents of the United States for any purposes under this agreement. An individual providing services under the ACES program is deemed to be an employee of the United States Government solely for purposes of chapter 171 of title 28, United States Code, provided the individual is acting within the scope of the agreement.
- d. Except in very limited circumstances (e.g., construction agreements), no agreement period of performance can exceed a total of five years, including extensions.
- e. Recipients who engage or assist in scientific related activities on behalf of USDA must uphold the principles of scientific integrity established by

Departmental Regulations 1074-001, Scientific Integrity. Covered activities include engaging in, supervising, managing, and reporting scientific work; analyzing and publicly communicating information resulting from scientific work; and utilizing information derived from scientific work in policy and decision making.

- f. Recipients of awards under covered programs (as defined in Executive Order 13858, January 31, 2019) are encouraged to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or subaward that is chargeable under the award. "Covered program" means a program that provides financial assistance for the alteration, construction, conversion, demolition, extension, improvement, maintenance, construction, rehabilitation, or repair of an infrastructure project in the United States. However, it does not include programs for which a domestic preference is inconsistent with law or programs providing financial assistance that are subject to comparable domestic preferences.
- g. The recipient and its employees are prohibited from promoting, recommending, or discussing the availability of specific commercial products or services with FPAC agency clients in the course of carrying out activities under this agreement, including any products or services offered by the recipient, except as may be specifically allowed in the agreement.

X. PATENTS, INVENTIONS, COPYRIGHTS, AND ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER

- a. The following acknowledgment of USDA support must appear in the publication of any material, whether copyrighted or not, and any products in electronic formats (web sites, computer programs, etc.) that is substantially based upon or developed under this award:

"This material is based upon work supported by the U.S. Department of Agriculture, under agreement number [recipient should enter the applicable award number here]."

In addition, all publications and other materials, except scientific articles or papers published in scientific journals, must include the following statement:

"Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Agriculture. In addition, any reference to specific brands or types of products or services does not constitute or imply an endorsement by the U.S. Department of Agriculture for those products or services."

- b. All publications printed with Federal Government funds will include the most current USDA nondiscrimination statement, available from the Public Affairs Division, Civil Rights Division, or on the USDA home page. If the material is too

small to include the full nondiscrimination statement, the material must, at a minimum, include the following statement:

“USDA is an equal opportunity provider, employer, and lender.”

The recipient is responsible for ensuring that an acknowledgment of USDA is made during news media interviews, including popular media such as radio, television, and news magazines, that discuss work funded by this award in a substantial way.

- c. Allocation of rights of patents, inventions, and copyrights must be in accordance with 2 CFR Part 200.315. This regulation provides that small businesses normally may retain the principal worldwide patent rights to any invention developed with USDA support.
- d. In accordance with 37 CFR Section 401.14, each subject invention must be disclosed to the Federal agency within 2 months after the inventor discloses it in writing to recipient personnel responsible for patent matters. Invention disclosure statements pursuant to 37 CFR Section 401.14(c) must be made in writing to FPAC.BC.GAD@usda.gov.
- e. USDA receives a royalty-free license for Federal Government use, reserves the right to require the patentee to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must manufacture it domestically.

XI. COST SHARING REQUIREMENTS

- a. If the award has specific cost-sharing requirements, cost-sharing participation in other projects must not be counted toward meeting the specific cost-share requirement of this award. Cost sharing must come from non-Federal sources unless otherwise stated in the applicable program authorizing statute.
- b. Cost sharing costs must be necessary and reasonable for accomplishment of project or program objectives.
- c. Cost sharing must be documented on each SF 425 and payment requests as it is provided by the recipient or third party. The required cost-share or matching ratio must be met by the end of the agreement period of performance; however, it does not have to be maintained for every payment request.
- d. Should the recipient become aware that it may be unable to provide the cost-sharing amount identified in this award, it must—
 1. Immediately notify the FPAC Business Center Grants and Agreements Division via e-mail to FPAC.BC.GAD@usda.gov, and
 2. Either specify the steps it plans to take to secure replacement cost sharing or specify the plans to phase out the project in the absence of cost sharing.

Failure by the recipient to notify FPAC in accordance with this section or failure to

submit an acceptable remediation plan may result in the disallowance of some or all the costs charged to the award, the subsequent recovery by FPAC of some of the FPAC funds provided under the award, and/or termination of the award. It may constitute a violation of the terms and conditions of the award so serious as to provide grounds for subsequent suspension or debarment. FPAC reviews and approves or disapproves cost-sharing remediation plans on a case-by-case basis.

- e. The recipient must maintain records of all project costs that are claimed s cost sharing as well as records of costs to be paid by FPAC. If the recipient's cost sharing includes in-kind contributions, the basis for determining the valuation for volunteer services and donated property must be documented.
- f. Recipients must also request prior approval before changing the source or type of cost sharing. See Section III(e)(4).

XII. PROGRAM INCOME

- a. Program income does not include Federal funds received under an award. Program income means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in §200.307(f). Examples include fees charged for conferences or workshops, fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them.
- b. FPAC recommends treating program income with the additive method, however recipients may request to use the deductive method.
- c. If program income is earned and not already identified and addressed in the award, the recipient must provide notification to the FPAC BC GAD via e-mail to FPAC.BC.GAD@usda.gov and indicate the preferred treatment method (additive or deductive).
- d. Program income may be used to meet recipient cost-sharing requirements with the approval of the Government.
- e. Recipients must report all program income on the applicable SF 270 and SF 425 as it is earned.

XIII. PROCUREMENT STANDARDS

The recipient must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations, for the acquisition of property or services (including construction) required under a Federal award or subaward. Those procedures must comply with the procurement standards set out in 2 CFR 200.317-327, including the requirements

regarding conflicts of interest, competition, and methods of procurement. Particularly, take note that sole-source contracting is unallowable in almost all instances. Procurements must be well-documented, and those records are subject to inspection and audit.

XIV. BUILD AMERICA, BUY AMERICA FOR CONSTRUCTION

“Buy America” preference applies to Federal financial assistance awards that include construction components, even if it is funded by both Federal and non-Federal funds under the award. Subawards should conform to the terms and conditions of the Federal award from which they flow. A Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to a construction project.

In accordance with 2 CFR § 200.327, contracts must contain the applicable provisions described in Appendix II to Part 200. Solicitations for Bid and Pre-bid Conference must point out the requirement for the Buy America terms in the awarded contracts. Responsive bids must include any requests for waivers to the Buy America requirements.

Recipients must ensure that none of the funds provided under this award are used for project construction unless: (1) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. (Excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.) The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to a construction project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished project but are not an integral part of the structure or permanently affixed to it.

XV. NONEXPENDABLE EQUIPMENT

- a. Recipients purchasing equipment or products with funds provided under this award are encouraged to purchase only American-made equipment and products. A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. All other recipients must follow these procedures.
- b. Title to equipment acquired under a Federal award will vest conditionally in the recipient upon acquisition. The recipient must not encumber the property without

approval of the Government.

- c. The recipient must use the equipment for the authorized purposes of the project for as long as needed whether or not the project or program continues to be supported by the Federal award. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:
 - 1. Activities under a Federal award from the Federal awarding agency which funded the original program or project, then
 - 2. Activities under Federal awards from other Federal awarding agencies.
- d. The recipient must maintain property records that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
- e. The recipient must take a physical inventory of the property and reconcile the results with the property records at least once every two years until final disposition.
- f. When equipment is no longer needed for any of the purposes set out in this provision and the per-unit fair market value is less than \$5,000, the recipient may retain, sell, or dispose of the equipment with no further obligation to FPAC. However, if the per-unit fair market value is \$5,000 or more, the recipient must submit a written request for disposition instructions to FPAC.BC.GAD@usda.gov.

XVI. LIMIT OF FEDERAL LIABILITY

- a. The maximum financial obligation of FPAC to the recipient is the amount of funds indicated in the award as obligated by FPAC. However, if an erroneous amount is stated on the approved budget, or any supporting document relating to the award, FPAC will have the unilateral right to make the correction and to make an appropriate adjustment in the FPAC share of the award to align with the Federal amount authorized.
- b. For awards where it is anticipated that the period of performance will include multiple budget periods, all subsequent budget periods are subject to the availability of funds, program authority, satisfactory performance, and compliance with the terms and conditions of the Federal award.

XVII. AMENDMENTS

The parties may modify this agreement via formal amendment executed by the authorized signatories of each. The FPAC Business Center's Grants and Agreements Division has developed streamlined procedures for certain agreement changes, including no-cost extensions and some changes to agency and recipients contacts that do not require formal amendments. Contact the administrative contact for this award for instructions.

XVIII. PRIVACY ACT AND PROHIBITION AGAINST CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS

- a. Activities performed under this award may involve access to confidential and potentially sensitive information about governmental and landowner issues. The term "confidential information" means proprietary information or data of a personal nature about an individual, or information or data submitted by or pertaining to an organization. This information must not be disclosed without the prior written consent of FPAC.
- b. The recipient's personnel will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. Section 552a, and implementing regulations and policies with respect to systems of records determined to be subject to the Privacy Act. The recipient's personnel must also comply with privacy of personal information relating to natural resources conservation programs in accordance with section 1244 of Title II of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171).
- c. The recipient agrees to comply with the **"Prohibition Against Certain Internal Confidentiality Agreements:"**
 - 1. You may not require your employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
 - 2. You must notify your employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (1) of this award provision are no longer in effect.
 - 3. The prohibition in paragraph (1) of this award provision does not contravene requirements applicable to any other form issued by a Federal department or agency governing the nondisclosure of classified information.
 - 4. If FPAC determines that you are not in compliance with this award provision, FPAC:
 - i. Will prohibit your use of funds under this award, in accordance with sections 743 and 744 of Division E of the Consolidated Appropriations Act, 2016, (Pub. L. 114-113) or any successor provision of law;
 - ii. May pursue other remedies available for your material failure to comply with award terms and conditions.

XIX. ACKNOWLEDGMENT OF SECTION 1619 COMPLIANCE

The recipient agrees to comply with FPAC guidelines and requirements regarding the disclosure of information protected under Section 1619 of the Food, Conservation, and Energy Act of 2008 (PL 110- 246), 7 U.S.C. 8791 as described below. Responsibilities.

- a. Acceptance of this award indicates acknowledgment and understanding that the recipient is legally bound by Federal statute to comply with the provisions of Section 1619 and that the recipient will not subsequently disclose information protected by section 1619 to any individual or organization that is not directly covered by this award. Any such subsequent disclosure of the protected information (except as permitted under Section 1619) will be considered a violation of Section 1619. The recipient will be held responsible should disclosure of the protected information occur.
- b. Acceptance of this award legally binds every owner, manager, supervisor, employee, contractor, agent, and representative of the recipient to comply with the provisions in Section 1619. The recipient must consult with FPAC prior to providing protected information to an entity or individual outside of the recipient and as necessary to implement the program to ensure that such release is permissible.
- c. The recipient will use the protected information only to perform work that is directly connected to this award. Use of the protected information to perform work that is not directly connected to this award is expressly prohibited.
- d. The recipient must internally restrict access to the protected information to only those individuals who have a demonstrated need to know the protected information to perform work under this award.
- e. The provisions in Section 1619 are continuing obligations. Even when the recipient is no longer a recipient, or when individuals currently affiliated with the recipient become no longer so affiliated, every person having been provided access to the protected information will continue to be legally bound to comply with these provisions.
- f. The recipient must notify all managers, supervisors, employees, contractors, agents, and representatives about this provision and the requirements of Section 1619. Notifications about the existence of this provision must be made to those individuals who are new to the organization and periodic notifications must be sent throughout the organization (as well as to all contractors and agents) to remind all about the ongoing and continuing requirements.
- g. When the recipient is unsure whether particular information is covered or protected by Section 1619, the recipient must consult with FPAC to determine whether the information must be withheld.
- h. Use of the protected information for any purpose is expressly prohibited after the period of performance end date of this award. Upon the award end date, any protected information provided under this award must be immediately destroyed or returned to FPAC. The recipient must provide to FPAC written certification that the protected information (paper copy, electronic copy, or both) has been properly destroyed, removed from any electronic storage media, or both.
- i. Any State's "sunshine law," "open records act" or other version of the Freedom of Information Act is superseded by section 1619 under the Supremacy Clause of the U.S. Constitution. Accordingly, information protected from disclosure by section 1619 must not be released under such

State laws.

j. Protected Information.

Examples of the types of information prohibited by disclosure under Section 1619 include, but are **not limited to**, the following:

- i. State identification and county number (where reported and where located).
 - ii. Producer or landowner name, business full address, phone number, Social Security Number, and similar personal identifying information.
 - iii. Farm, tract, field, and contract numbers.
 - iv. Production shares and share of acres for each Farm Serial Number (FSN) field.
 - v. Acreage information, including crop codes.
 - vi. All attributes for Common Land Units (CLUs) in USDA's Geospatial Information System
 - vii. Any photographic, map, or geospatial data that, when combined with other maps, can be used to identify a landowner.
 - viii. Location of conservation practices.
- k. Section 1619 allows disclosure of "payment information (including payment information and the names and addresses of recipients of payments) under any Department program *that is otherwise authorized by law*" (emphasis added). The names and payment information of producers generally may be provided to the public; however, the recipient shall consult with FPAC if there is any uncertainty as to the provision of such information.
- l. Section 1619 also allows disclosure of otherwise protected information if "the information has been transformed into a statistical or aggregate form without naming any—(i) individual owner, operator, or producer; or (ii) specific data gathering cite." The recipient must consult with FPAC as to whether specific information falls within this exception prior to relying on this exception.
- m. Violations. The recipient will be held responsible for violations of this provision and Section 1619. A violation of this provision by the recipient may result in action by FPAC, including termination of the underlying Federal award.
- n. Effective Period. The requirements of this provision is effective on the date of the final signature and will continue until FPAC notifies the recipient that it is no longer required based on changes in applicable Federal law.

XX. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

The recipient (including subrecipients) is responsible for compliance with the prohibition on certain telecommunications and video surveillance services or equipment identified in 2 CFR 200.216. See Public Law 115-232, Section 889 for additional information. In accordance with 2 CFR 200.216, the recipient (including subrecipients) is prohibited from obligating or expending loan or grant funds for covered telecommunications equipment or services to:

- o. procure or obtain, extend or renew a contract to procure or obtain;

- p. enter into a contract (or extend or renew a contract) to procure; or
- q. obtain the equipment, services or systems.

XXI. NATIONAL POLICY REQUIREMENTS

The recipient must comply with all relevant public policy requirements, including those in general appropriations provisions, which can be accessed at this link:
https://www.ocfo.usda.gov/docs/Regulatory_Statutory_and_National_Policy_Requirements_v2_2018_04_17.pdf

XXII. TERMINATION

In accordance with 2 CFR 200.340, the recipient understands this agreement may be terminated in whole or in part as follows:

- a. By the Federal awarding agency or pass-through entity, if a recipient fails to comply with the terms and conditions of a Federal award;
- b. By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
- c. By the Federal awarding agency or pass-through entity with the consent of the recipient, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or
- d. By the recipient upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety.
- e. If the Federal award is terminated for the recipient's material failure to comply with the U.S. Constitution, Federal statutes, regulations, or terms and conditions of the Federal award, the termination decision will be reported to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS) in accordance with 2 CFR200.341.

XXIII. REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE

If the total value of the recipient's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and

performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

a. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

1. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
2. Reached its final disposition during the most recent five-year period; and
3. Is one of the following:
 - i. A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
 - ii. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - iii. An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - iv. Any other criminal, civil, or administrative proceeding if:
 - A. It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
 - B. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - C. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

b. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

c. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

d. Definitions

For purposes of this award term and condition:

1. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
2. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
3. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
 - i. Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 - ii. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

XXIV. AWARD CLOSEOUT

- a. Award closeout is the process by which FPAC determines that all required project activities have been performed satisfactorily and all necessary administrative actions have been completed.
- b. The recipient must submit, no later than 120 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the agreement, including documentation showing that match or cost-share requirements have been met. The awarding agency may approve extensions when requested by the recipient.
- c. Unless the awarding agency authorizes an extension, the recipient must liquidate all obligations incurred under the agreement not later than 120 calendar days after the end date of the period of performance.
- d. Recipients must submit all requests for reimbursements no later than 120 calendar days after the end date of the period of performance.
- e. The recipient must promptly refund any balances of unobligated cash that the awarding agency paid in advance or paid and that are not authorized to be retained by the recipient for use in other projects. See OMB Circular A-129 and see §200.345 Collection of amounts due, for requirements regarding unreturned amounts that become delinquent debts.
- f. Recipients must retain all records pertaining to the agreement in accordance with 2 CFR 200.333-337 and any additional requirements included in the

agreement statement of work.

- g. Recipients must follow disposition requirements for property acquired with award funds in accordance with 2 CFR 200.310-316 and the terms of this agreement.
- h. If the recipient does not submit all reports in accordance with this section and the terms and conditions of the Federal award within one year of the period of performance end date, the Federal awarding agency must proceed to close out with the information available, including de-obligation of remaining funds. In addition, in accordance with 2 CFR 200.344, the Federal awarding agency must report the non-Federal entity's material failure to comply with the terms and conditions of the award with the OMB-designated integrity and performance system (currently FAPIIS).

XXV. NON-DISCRIMINATION IN USDA PROGRAMS

The recipient agrees that, in accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

XXVI. CARE AND USE OF ANIMALS

For any award that involves the care and use of vertebrate animals, the recipient is responsible for complying with the Animal Welfare Act (7 USC, 2131-2156), Public Law 89-544, 1996, as amended, and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR Parts, 1, 2, 3, and 4. In the case of domesticated farm animals housed under farm conditions, the recipient must adhere to the principles stated in the [Guide for the Care and Use of Agricultural Animals in Research and Teaching](#), published by the American Dairy Science Association®, the American Society of Animal Science, and the Poultry Science Association, 2020. The recipient must have an approved Animal Welfare Assurance Statement on file with the Public Health Service Office for Laboratory Animal Welfare (OLAW) that describes the institution's animal care and use policies, the line of authority for animal care at the institution, veterinary care program, personnel and facilities. If no assurance statement is on file, the organization must contact NRCS to discuss alternatives.

XXVII. USE AND ACCEPTANCE OF ELECTRONIC SIGNATURES

Use of electronic signatures is encouraged to increase efficiency when creating and maintaining electronic records. "Electronic signature" means symbols or other data in digital form attached to an electronically submitted document as verification of the sender's intent to sign the document or a method of signing an electronic message that identifies and authenticates a particular person as the source of the electronic message and indicates such person's approval of the information contained in the message along with a date stamp (44

U.S.C. 3504, Sec. 1710). FPAC agencies will accept such signatures on application materials, payment requests, reports, and any other document that requires a signature certification. Scanned or photographed images of manual signatures are also acceptable, though photographs are least preferred due to the large amount of digital storage required to maintain them. Names merely typed in script fonts or other unverified electronic signatures cannot be accepted. Application documents submitted through Grants.gov are deemed "signed" if they bear the Grants.gov date stamp footer. Documents transmitted via ezFedGrants are digitally authenticated and acceptable.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 20, 2023

SUBJECT: Public Hearing: Mountain View Petition to Incorporate

RECOMMENDED MOTION:

Open the public hearing to take testimony on the petition submitted to incorporate a new city of Mountain View; file no. 247-23-000587-TA.

BACKGROUND AND POLICY IMPLICATIONS:

The Board will hold a public hearing to consider the petition submitted to incorporate a new city of Mountain View. The full record is available at the project website:

www.deschutes.org/mountainviewincorporation.

BUDGET IMPACTS:

None

ATTENDANCE:

- Nicole Mardell, AICP, Senior Planner
Will Groves, Planning Manager
Peter Gutowsky, AICP, Community Development Director
Stephanie Marshall, Asst Legal Counsel



MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Nicole Mardell, AICP, Senior Planner

DATE: September 13, 2023

SUBJECT: Public Hearing: Mountain View Petition to Incorporate

The Board of County Commissioners (Board) will conduct a public hearing concerning a petition to incorporate the proposed City of Mountain View (file no. 247-23-000587-TA) on September 20, 2023 at 9:00 a.m.

The full record is available at the project website: www.deschutes.org/mountainviewincorporation

The staff report is included as an attachment to this memo and is also available on the website. The hybrid public hearing will be conducted in-person, electronically, and by phone.

I. BACKGROUND

On February 14, 2023, a Prospective Petition for Incorporation of a City was submitted to the Deschutes County Clerk’s office. The Chief Petitioner, Andrew Aasen, seeks to establish a new city, approximately 265 square miles (169,550 acres) in size, extending west of Diamond T Road to the intersection of Highway 20 and Highway 27¹ as shown in the attached map.

Oregon Revised Statute (ORS) sections 221.005 to 221.106 outline the procedures for incorporation of new cities. Under these rules, an unincorporated area of at least 150 persons can submit a petition to incorporate to the county clerk’s office for consideration by the Board. The Chief Petitioner, Andrew Aasen collected the required signatures from at least 20 percent of registered voters in the petition boundary, which were certified by the County Clerk on April 28, 2023.

¹ Note: previous materials cited Highway 27 as George Millican Highway, which is a separate road farther inside the proposed boundary. This has been corrected on the project website and in the staff report.

On June 9, 2023, the petitioner submitted the petition application and requested a public hearing. The role of the Board is to hold a public hearing to consider the feasibility of the proposal and if it should move forward to the ballot for a vote².

Case law and statute outline the following three criteria for the Board’s review.

- 1. Whether the proposed boundary correctly includes all lands that would be benefited from being in the proposed city;
- 2. Whether the taxation rate will support the proposed services; and,
- 3. Whether the proposed city can and will be able to comply with relevant statewide planning goals, County Comprehensive Plan goals and policies, and implementing ordinances.

The first two issues are required by the ORS and the third is related to land use and is required by Oregon Administrative Rule (OAR) and *1000 Friends of Oregon v. Wasco County Court*, 299 Or. 344, 358-60, 67 (1985).

If the Board were to find all three issues are sufficiently supported by the applicant’s analysis and burden of proof, the petitioner could then move forward to a ballot initiative. At that time, registered voters in the proposed city boundary would vote on official incorporation and formation of a governing body.

II. PROPOSAL AND STAFF RECOMMENDATION

The applicant’s materials and the entirety of the record are found on the project website: www.deschutes.org/mountainviewincorporation. Attached to this memo is the staff report which contains findings and recommendations for the Board’s consideration.

III. PUBLIC HEARING PROCESS

Notice of Public Hearing was mailed on August 17, 2023, to all property owners within the proposed boundary as well as those property owners within 750 feet of the boundary. The Notice of Public Hearing was also published in the *Bend Bulletin* for two consecutive weeks on August 21, 2023, and August 30, 2023. Notice of Public Hearing was posted on County owned property adjacent to Highway 20 on August 18, 2023. Staff has received numerous public and agency comments on this proposal, which are discussed in greater detail in the attached staff report.

During their August 9, 2023³, meeting, the Board signed Order 2023-033 establishing the parameters for this public hearing.

² Only registered voters within the proposed boundary can vote on the proposal if it is added to the ballot. Property owners who are not registered to vote in the boundary cannot vote but should instead provide testimony during the public hearing process.

³ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-118>

Testimony provided during the hearing shall follow the time limits below to ensure an orderly and efficient hearing process.

- Petitioner Presentation: 45 minutes
- Agency Comment: 10 minutes per agency
- Public Comment: 3 minutes per individual
- Petitioner rebuttal: 10 minutes

A timer will be used to ensure these time limits are followed. As of the date of this memo, staff anticipates at least 15 individuals to testify during the public comment portion of the hearing.

IV. NEXT STEPS

At the conclusion of the public hearing, the Board can choose one of the following options:

- Continue the hearing to a date and time certain;
- Close the oral portion of the hearing and leave the written record open to a date and time certain;
- Close the hearing and commence deliberations; or
- Close the hearing and schedule deliberations for a date and time to be determined.

ATTACHMENTS:

1. Staff Report
2. Boundary Maps



COMMUNITY DEVELOPMENT

STAFF REPORT

FILE NUMBER: 247-23-000587-TA

HYBRID HEARING: September 20, 2023
Deschutes Services Center
Barnes & Sawyer Rooms
1300 NW Wall Street
Bend, OR 97708
And Via Zoom

PETITIONER Andrew Aasen
27898 Ford Road
Bend, OR 97701

REQUEST: Petition to incorporate the proposed City of Mountain View.

LOCATION: The proposed City of Mountain View extends west at Diamond T Road and ends in the east at the intersection of Highway 20 and 27. It consists of approximately 265 square miles or 169,550 acres.

STAFF CONTACT: Nicole Mardell, AICP, Senior Planner
Phone: 541-317-3157
Email: Nicole.Mardell@deschutes.org

RECORD: Record items can be viewed and downloaded from:
www.deschutes.org/mountainviewincorporation

APPLICABLE CRITERIA

- Oregon Revised Statutes (ORS)
 - Chapter 195, Local Government Planning Coordination
 - Chapter 197.175, Cities’ and counties’ planning responsibilities; rules on incorporations; compliance with goal
 - Chapter 215, County Planning
 - Chapter 221, Incorporation of Cities
- Oregon Administrative Rules (OAR), Chapter 660
 - Division 4 (Goal 2 Exceptions Process)

- Division 6 (Forest Lands)
- Division 8 (Goal 10 Housing)
- Division 9 (Industrial and Commercial Development)
- Division 11 (Public Facilities Planning)
- Division 12 (Transportation Planning)
- Division 14, (Application of the Statewide Planning Goals to Newly Incorporated Cities, Annexation, and Urban Development on Rural Lands)
- Division 15, (Statewide Planning Goals and Guidelines)
- Division 16 (Goal 5)
- Division 33 (Agricultural Land)

McManus v. Skoko, 255 Or. 374, 380 (1970)

1000 Friends of Oregon v. Wasco Co. Court, 62 Or App 75, 659 P2d 1001, rev den 295 Or 399, 614 P2d 1144 (1980)

1000 Friends of Oregon v. Wasco County Court, 299 Or. 344, 358-60, 67 (1985)

Deschutes County Comprehensive Plan. Deschutes County Code Title 23

Deschutes County Code (DCC) Subdivision, Zoning, and Development Procedures Ordinances. Titles 17, 18, 22

I. INTRODUCTION AND BACKGROUND

Introduction

A petition has been filed for the incorporation of a new city in Deschutes County. The Board of County Commissioners (Board) is holding a hearing to determine whether to place the proposed incorporation on the May 2024 ballot per ORS 221.040(3). To determine whether the incorporation should be placed before the voters, the Board must determine:

1. Whether the proposed boundary correctly includes all lands that would be benefited from being in the proposed city.
2. Whether the taxation rate will support the proposed services.
3. Whether the proposed city can and will be able to comply with relevant statewide planning goals, County Comprehensive Plan goals and policies, and implementing ordinances.

The first two issues are required by ORS and the third is related to land use and is required by OAR and *1000 Friends of Oregon v. Wasco County Court*, 299 Or. 344, 358-60, 67 (1985).

Background

1. On February 14, 2023, a prospective petition to incorporate the City of Mountain View was submitted to the Deschutes County Clerk.
2. On April 18, 2023, four signature sheets were filed with the Deschutes County Clerk’s office containing 29 signatures of electors within the boundary of the proposed City of Mountain View.

3. On April 28, 2023, Steve Dennison, Deschutes County Clerk, certified signatures on the petition submitted by Andrew Aasen (Petitioner) for incorporation for the proposed City of Mountain View were verified and that there are over 29 valid signatures.
4. On June 9, 2023, the Petitioner submitted a petition to the Board to incorporate the proposed City of Mountain View and related documents including an *Economic Feasibility Study* for review and consideration at a public hearing.
5. On July 7, 2023, Christopher Bell, Senior Assistant Legal Counsel, mailed a letter to the Petitioner, describing, "while you have provided at least the minimum information for the Board's review of your petition as required by ORS 221.040(2), you have not provided any evidence to demonstrate whether the proposed city can and will comply with the Statewide Land Use Planning Goals once it is incorporated and assumes primary responsibility for comprehensive planning in the area to be incorporated."
6. On July 10, 2023, the Petitioner provided an email response to Mr. Bell's letter and requested the public hearing be scheduled.
7. On July 21, 2023, the Petitioner provided supplemental materials, including a *Statewide Land Use Compliance Plan*.
8. On August 9, 2023 the Board adopted Order 2023-033 accepting a petition and setting a date of September 20, 2023 for a public hearing on the incorporation of the proposed City of Mountain View.
9. Between August 18-20, 2023, the Petitioner emailed additional information to be added to the record. One of these emails included an image of a suggested amendment to the proposed boundary. The image did not include any specific detail on a formal change to the petition, nor additional information such as the number of taxlots impacted by the change. The information reviewed in this staff report is based on the original boundary submitted with the petition for incorporation.
10. The properties subject to the petition extend west at Diamond T Road and end in the east at the intersection of Highway 20 and 27. The property is further described in the Petitioner's *Economic Feasibility Study*.
11. The properties subject to the petition are located in Township 18, Ranges 13 and 14; Township 19, Ranges 13, 14, 15, 16; Township 20, Ranges 13, 14, 15, 16, 17; and Township 21, Ranges 14, 15 and 16.
12. The properties subject to the petition encompass approximately 265 square miles or 169,550 acres, with a Petitioner's estimate of a resident population of approximately 160 +/- residents.

13. Land ownership consists of a 618 taxlots totaling 169,550 acres:

- Federal: 112 taxlots: 127,303 acres
- Private: 437 taxlots: 39,350 acres
- Rights-of-Way: 1,408 acres
- County: 54 taxlots: 1,244 acres
- State: 15 taxlots: 246 acres

14. Rural zoning for the proposed City of Mountain View consists of:

- Exclusive Farm Use / Horse Ridge: 133,889 acres
- Forest Use 1: 28,637 acres
- Surface Mining: 2,838 acres
- Flood Plain: 1,424 acres
- Exclusive Farm Use / Alfalfa: 628 acres
- Open Space & Conservation: 701 acres
- Rural Service Center / Commercial & Mixed Use: 27 acres

15. There are several combining zones that apply to the petition, consisting of:

- Wildlife Area – Deer Winter Range: 267 taxlots, 113,079 acres
- Wildlife Area – Antelope: 474 taxlots, 80,399 acres
- Sage-grouse General: 209 taxlots, 75,631 acres
- Sage-grouse Low Density: 56 taxlots, 10,452 acres
- Sage-grouse Core Area: 9 taxlots, 7,913 acres
- Sensitive Bird & Mammal Habitat, 13 taxlots; 6 sites

II. PUBLIC COMMENTS

Notice of Application was sent to property owners located within the proposed boundary, and within 750 feet of the proposed boundary on August 3, 2023. Notice of Public Hearing was mailed on August 17, 2023, and was physically posted in three locations as required by ORS 221.040(1): in the Deschutes County Service Center near the hearing room, in the Deschutes County Community Development Department foyer bulletin board, and on county owned property adjacent to Highway 20 within the proposed boundary. Notice of Public Hearing was also published in the Bend Bulletin for two consecutive weeks prior to the public hearing (August 23 and August 30, 2023). As of September 13, 2023, thirty-one public comments have been submitted to the record.

Those in opposition (approximately twenty-one) cited the following concerns:

- Allegations that Petitioner misrepresented the purpose of the proposed petition, stated purpose during signature varied but included representation that it would 1) create a rural fire protection

district, 2) would stop the landfill siting process or 3) incorporate only the existing rural community of Millican (2 parcels).

- Allegations that Petitioner’s Code Enforcement circumstance appears to be the basis for the petition to incorporate¹.
- Concern regarding higher cost and taxes associated with incorporation.
- Concern regarding budget feasibility.
- Concern regarding lack of community discussion/consensus on incorporation.
- Concern regarding lack of benefit to incorporation and necessity given low population.
- Concern regarding incompatible uses with city (hunting, target shooting, etc.)
- Concern regarding water availability and infrastructure costs with serving the area.
- Assertion that existing County services and fire protection are adequate.
- Concern regarding wildlife and natural resources.

Those in support (approximately ten) cited general support for the petition.

III. AGENCY COMMENTS

Notice of Application was sent to agencies on August 3, 2023, and Notice of Public Hearing was sent on August 17, 2023. The following agencies submitted comments:

- Oregon Department of Fish and Wildlife: cited concerns relating to mule deer, elk, and Sage-grouse habitat. Noted that the proposal was not adequately mitigating for potential Sage-grouse disturbance.
- Deschutes National Forest Supervisor: Noted that portion of proposal includes National Forest System Land. Lands in a National Forest are federal, subject to Federal legal jurisdiction, and not subject to state or local zoning or taxation.
- Bureau of Land Management, Prineville District, Deschutes Field Office: Noted that 65% of land in boundary is managed by BLM. Raised several concerns regarding areas designated as wilderness, areas of environmental concern, and Greater Sage-grouse habitat. Noted that BLM land is not designated for disposal and not subject to taxation. Also noted that if incorporation occurs, a Mutual Aid Agreement would be necessary for fire protection, of which a requirement is for the new city to have a fire district. Until executed, BLM would be limited in responding to private land ignitions.
- Oregon Water Resources Department: Provided information regarding well depths in the proposed boundary area, noted that well yields in the area are generally quite low and would have difficulty supplying enough water for a municipality. Also noted that quasi-municipal or municipal water right is unlikely to be obtained due to well declines, and that the area is in the Deschutes Basin Mitigation Zone of Impact.

¹ Staff notes the Petitioner was involved with a code compliance case (247-22-000510-CE) that resulted in a voluntary compliance agreement. As this proposal is for an incorporation, and not for a land use application on an individual property, code compliance matters on particular properties are not applicable criteria for this incorporation application.

- League of Oregon Cities: Provided detail on the many aspects of Oregon Law that cities are required to abide by, which include financial and staff resources.
- Deschutes County Road Department: Provided information on current costs of road maintenance and concerns regarding Petitioner’s proposed budget for road maintenance.
- Deschutes County Transportation Planner: Provided information related to current County owned and maintained roads and process for jurisdictional transfer.

IV. INCORPORATION REQUIREMENTS

Incorporation Criteria

ORS Chapter 221 sets out city incorporation procedures and ORS Chapter 197 establishes county land use planning authority and responsibilities.

Role of Board of County Commissioners

ORS 221.040(2) provides that, upon the filing of a petition for incorporation, the county “Court” (Board of Commissioners) shall conduct a public hearing to determine if the proposed incorporation is “feasible” and should move forward to placement on the next election ballot. If the proposal were to move forward to the vote, only registered voters in the proposed boundary could vote to officially incorporate². During the public hearing, any person may appear and provide testimony on the following considerations:

- Proposed City Boundary and Benefit/Lack of Benefit to Properties
- Objections to Granting Petition
- Objections to Formation of Incorporated City
- Objections to Tax Rate
- Reasonable Likelihood that City Can and Will Comply with Statewide Planning Goals, Including Development of a Land Use Program.

The relevant statute and case law identify three formal approval criteria to guide the Board’s decision-making process.

1. Whether to alter the proposed boundaries in order to include all territory that may be benefited or exclude territory that will not be benefitted.
2. The adequacy of the estimated taxation rate to support the proposed services.
3. Whether the incorporation is in compliance with the statewide land use goals.

The County’s authority to approve, reject, or modify the proposal is also established in ORS 221.040(3), which provides,

² As of August 2023 the County Clerk has record of 77 registered voters in the proposed boundary.
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Upon the final hearing of the petition, the Court, if it approves the petition as originally presented or in an altered form, shall provide by order for the holding of an election relating to the incorporation of the proposed city.

If approved or modified, the proposal would move forward to a vote. Staff provides findings to address each of these three criteria.

A. Proposed Boundary and Benefitted Lands

Criteria: The Board must consider whether the properties included within the boundaries of the new city are benefitted. "Benefit" is not defined by case law, nor ORS 221.040, rather the ORS states the County Court:

...may alter the boundaries as set forth in the petition to include all territory which may be benefitted by being included within the boundaries of the proposed incorporated city...No land shall be included in the proposed city which will not, in the judgment of the county, be benefitted.

Staff understands the term "benefit" to mean that the proposed property would see immediate and long-term value and little to no disadvantage from inclusion in a new city boundary.

Petitioner Response: The Petitioner provided the longitude and latitude coordinates for the proposed boundary and noted that the approximate population within the boundary is 160 +/- residents. The Petitioner did not provide any rationale for selection of the properties in the boundary, ownership information, zoning, or current use of properties in the proposed boundary.

In the Petitioner's August 1, 2023 submittal he provides the following to address this criteria.

The proposed boundary of the City of Mountain View have been carefully considered and takes into account key factors that could benefit the community. Here's a summarized analysis of how the proposed boundary seems to align with the community's needs and potential for growth:

Population: With a current population of 160, the proposed boundary seems to include areas that are currently populated and would benefit from being part of the city.

Land Use: Considering that the current land use is primarily Exclusive Farm Use (EFU), the incorporation's comprehensive planning to rezone areas as needed demonstrates a thoughtful approach to accommodating various land uses as the city develops. This can allow for a mix of residential, commercial, and agricultural zones to meet the community's needs.

Services: Since there are currently no services, the incorporation's plan to add services as allowed is a practical step to support the community's growth and development. This approach can ensure that the necessary infrastructure and amenities are put in place to serve the residents effectively.

Natural Resources: The inclusion of BLM land and forest land within the proposed boundary provides an opportunity for the city to actively engage in the conservation and management of these valuable

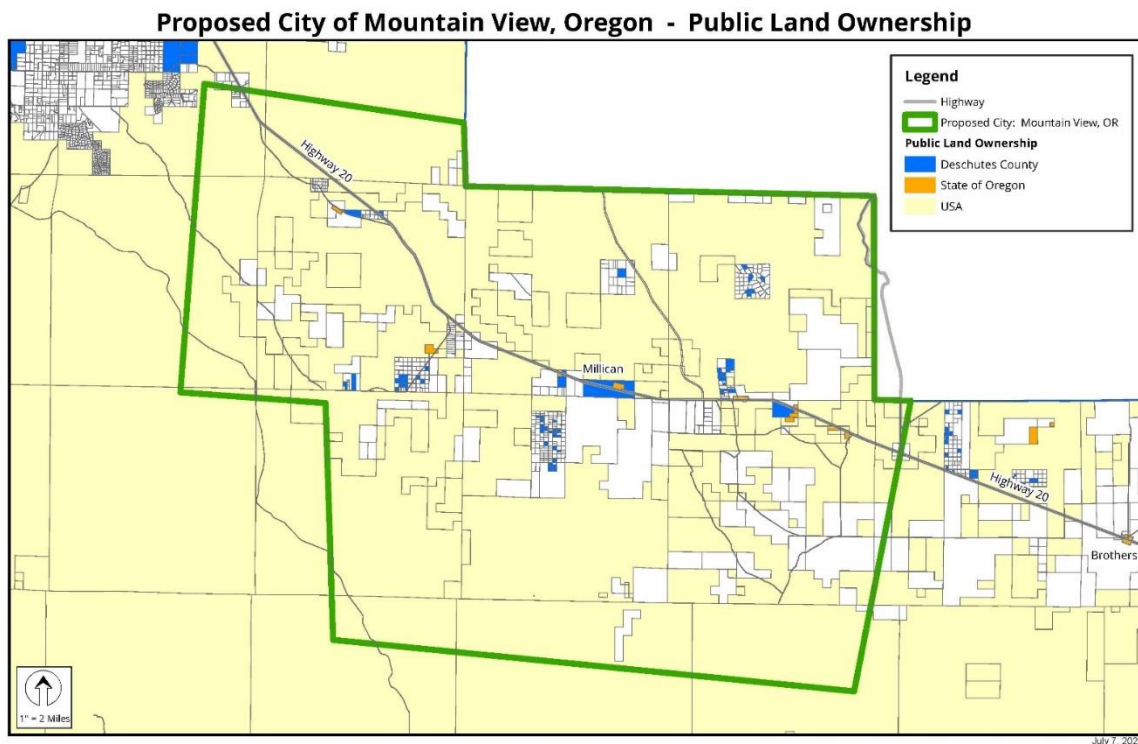
natural resources. Incorporating these lands could enable the city to have a say in their future development and ensure preservation for the benefit of residents.

Community Support: Given that the community wants to incorporate, it suggests a desire for local governance and self-determination. Incorporation can empower the community to make decisions that align with their specific needs and values.

Future Growth: Anticipating future growth from 160 to a maximum of 688 residents demonstrates a realistic projection for expansion. The proposed boundary can accommodate this growth and provide sufficient space for potential development.

Overall the proposed boundary of the City of Mountain View takes into account the community's preferences, potential for growth, and the need to address current and future infrastructure and service requirements. However, it is essential for local officials and planners to conduct a detailed analysis and community engagement to ensure that the boundary aligns with the long-term vision and aspirations of the residents.

Staff Findings:

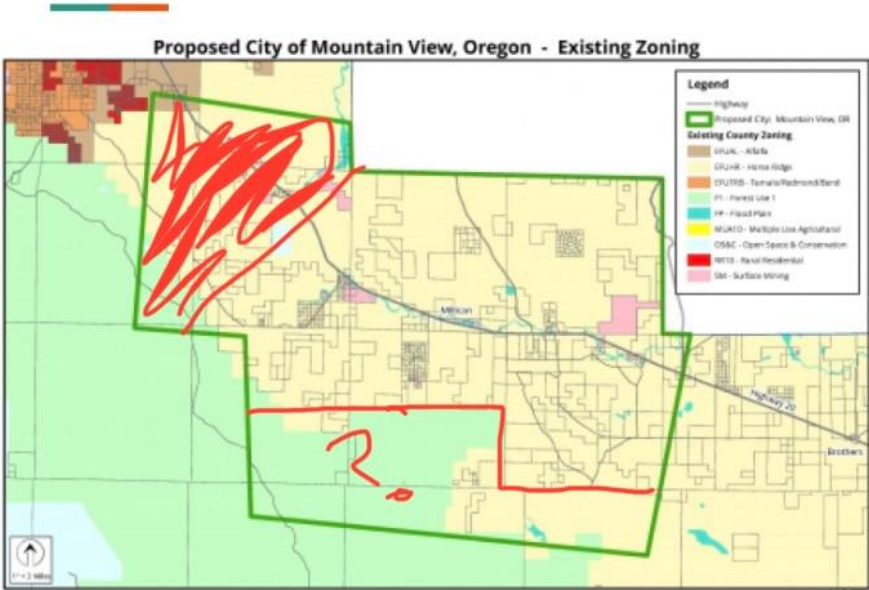


Boundary Size and Characteristics

The Petitioner for the City of Mountain View is proposing to incorporate an area encompassing 169,550-acres or 265-square miles. Within the proposed City of Mountain View approximately 75% of property is federally owned, 23.2% privately owned, and 1.6% state or county-owned property including existing property in road right-of-way.

The boundary appears to be in its proposed size and configuration in order to meet the statutory requirement listed in ORS 221.020, which establishes a minimum requirement of at least 150 residents residing in a boundary to initiate incorporation. In assessing the application materials, it is unclear if this minimum requirement is met. The Petitioner cites "Portland State University Census data" to conclude that approximately 160 residents live within the proposed boundary. This data source does not exist; therefore, staff assumes the Petitioner was intending to cite either the 2020 United States Census data, or Portland State University Population Research Center population estimate data.³ Staff has reviewed each of these sources and was not able to confirm the Petitioner's estimated population for the area. In each case, the data set covered a much larger area than the proposed boundary and is difficult to extract the population for this specific boundary. The Petitioner has not demonstrated with substantial evidence in the record that ORS 221.020 is met.

Boundary



As referenced in the background section, the Petitioner provided an amended boundary map in an email dated August 19, 2023. The map does not provide detail on the proposed boundary change including new coordinates or number of tax lots impacted. The petition cannot be modified at this stage, therefore staff will continue to review the original proposed boundary included in the petition to incorporate.

Comparison to Recent Incorporation Proposals

As there is limited guidance in statute on assessing incorporation boundary applications, staff reviewed materials related to recent successful incorporations. Through this review, staff notes there are significant differences between the proposed City of Mountain View boundaries and recent, successful, efforts. Staff compares and contrasts the proposed City of Mountain View boundary with those of other successful incorporation efforts below.

³ <https://www.pdx.edu/population-research/sites/g/files/znlchr3261/files/2022-06/Deschutes.pdf>
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The last municipality to successfully incorporate in Oregon was the City of La Pine in 2006. Before La Pine, the last municipality to successfully incorporate was the City of Keizer in 1982.⁴

The City of La Pine consists of 4,500 acres or 7 square-miles. The City of Keizer is approximately 4,713 acres or 7.36 square-miles. The proposed boundary for the City of Mountain View is approximately 37 times the size of other recent incorporation boundaries.

At the time of incorporation, the City of La Pine had approximately 1,000 residents reflecting a population density of approximately 143 residents per square mile. The City of Keizer, at time of incorporation, had a population of approximately 19,650 with a population density of approximately 2,669 residents per square mile. The population density for the City of Mountain View is anticipated to be 0.6 residents per square mile. Staff is concerned that the extremely low population density will provide impassable barriers to implementation of community services typically provided by a city, including creation of community water and wastewater systems, and a contiguous and well-maintained network of City roads.

At the time of incorporation, the City of La Pine encompassed the entire La Pine Urban Unincorporated Community, a designation granted by the state in 1996 due to the historic levels of dense development in the area and creation of the unincorporated community administrative rule (OAR 660-022-0030). This former Urban Unincorporated Community included County designations allowing for residential, commercial, industrial, business park, sewer treatment, and community facility uses. The area also contained an existing rural fire protection district, water and sewer districts, and a park and recreation district. At the time of incorporation, La Pine was able to utilize these existing services and levels of development to support municipal operations. Additionally, adjacent to the city boundary were rural residential exception lands and Bureau of Land Management (BLM) land identified for community expansion, meaning that the land was noted in BLM documents as a candidate for disposal.

In comparison, 94% of the land in the proposed City of Mountain View is resource zoned⁵, which heavily restricts under both state law and the County Code any development aside from uses supporting farm or forestry operations. Adjoining property is also resource zoned and appears to be actively used for farming, ranching, and rangeland uses. Twenty-seven acres or 0.015% of the proposed boundary is zoned as a Rural Service Center to encompass the historic community of Millican. The existing buildings on the property (gas station, post office, and residence) are currently for sale and the commercial buildings are not in use. The buildings are in disrepair, requiring renovation work prior to re-establishing any commercial uses. Remaining lands in the boundary are zoned for Surface Mining (1.6% total area), Flood Plain (0.8%), and Open Space and Conservation (0.4%)

Private and publicly owned lands are intermixed in the boundary, with large tracts of federal land often separating small privately owned properties. Approximately 27 dwellings are currently located within the proposed boundary, although it is unclear from assessor records whether these structures are compliant with state building code regulations and/or County land use regulations. Remaining privately owned lands are largely undeveloped. Federally owned land is used for conservation of sensitive species (Sage-grouse) and recreation, with several areas improved for Off-Highway Vehicle Recreation (OHV), hunting, and hiking. Comments received from the BLM and U.S. Forest Service note that these lands are not

⁴ The City of Damascus incorporated in 2004. However, it disincorporated in 2020.

⁵ Exclusive Farm Use – Horse Ridge Subzone (78%), Exclusive Farm Use – Alfalfa Subzone (0.3%), Forest Use 1 (16%).

designated for disposal and are not eligible for sale, donation, or transfer. Many are being managed for Sage-grouse conservation, a candidate species under consideration of designation under the federal Endangered Species Act.

The area in which the proposed City of Mountain View would be sited currently contains few public services. The Bend Rural Fire Protection District #2 protects a handful of properties on the northwestern edge of the boundary. There are no community water or sewer districts or systems, irrigation districts, nor a park district. The proposed City straddles the Bend-La Pine and Crook County School districts, with the closest school facility being the Brothers K-8 School located outside of the proposed boundary.

Benefitted Lands

ORS 221.040(2) notes *“No land shall be included in the proposed city which will not, in the judgment of the court, be benefitted”*.

"Benefit" is not specifically defined within ORS 221.440(2) however the Petitioner has provided examples of how properties within the proposed city boundary could be "benefitted" by incorporation.

These proposed benefits include:

- Rezoning of lands to allow for residential and commercial uses.
- Local control of road, planning, and building services
- Local control of natural resources
- Local control of fire protection
- Empowerment of residents

The boundary as currently proposed presents significant challenges to private property owners within the boundary seeking development opportunities, federal agencies seeking to meet conservation and land management goals, and adjacent farm and forestry operations in avoiding disruptions to farm and forestry practices. Further discussion of the proposed services and Petitioner’s Economic Feasibility Study is in the next section.

Staff has concerns regarding the necessity of the proposed incorporation. The likelihood of establishing a centralized water or sewer system, necessary for increased commercial and residential development, would prove to be difficult given the large boundary, remote location, and nature of existing uses and ownership within the proposed boundary. Over 75% of land in the proposed boundary is federally owned and will remain under federal ownership and authority if the incorporation were to be successful. This land is designated for conservation and the incorporation of these, and adjacent lands would be detrimental to current operations⁶. Approximately 94% of land in the proposed boundary, including privately owned land, is zoned for resource use. There are active grazing and ranching operations in the area that could be negatively impacted by development patterns and creation of new roads.

Furthermore, the Petitioner states the Urban Growth Boundary (UGB) will most likely encapsulate a one-to-two-mile radius from the Millican Store, leaving approximately 263 square miles of incorporated land

⁶ Staff also notes that these lands would not be subject to taxation by the proposed city.
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subject to county zoning, but under city control.⁷ There is no municipality in Oregon that contains such a discrepancy between its UGB and incorporated boundary (further discussed in the Statewide Planning Goal 14 analysis below). In Oregon, many cities' UGBs and incorporation boundaries are coterminous like La Pine. For those that are not, their UGBs extend beyond their incorporation boundary by several hundred or a few thousand acres like Bend, Redmond, and Sisters. Lastly, it is unclear if the Exclusive Farm Use (EFU), Surface Mine, and Flood Plain zoned taxlots within a one-to-two-mile radius are lawfully established units of land (lots of record) for development purposes, which will remain a statutory requirement, even if lands are incorporated.

Due to the high percentage of federal lands, resource zoned land, and vast area with limited population, staff finds the proposed boundary is an inappropriate size and configuration for incorporation and that the land included in the proposed city will not be benefited. The Petitioner's application materials do not provide a compelling reason for this incorporation, aside from more local control of building and planning processes.

B. Economic Feasibility Study

Criteria: The Board must consider if the proposed tax rate can support the proposed services for the new city.

The Petitioner has provided an *Economic Feasibility Study* that details plans for initial services (years 0-3 following incorporation) and long-range goals (15-30 years following incorporation). Additionally, the Petitioner has provided a fiscal breakdown for year one and year three following incorporation including a proposed budget and projected revenues.

Proposed Services

The Petitioner states that on day 0 following incorporation, the city will develop long range zoning and economic plans, vote on the format of municipal government, post add listings for an assistant city administrator, begin developing a local fire district, and provide road services. The Petitioner has provided minimal detail in the establishment and management of these services. Staff notes that until a city has plans adopted and approved by state agencies, the following services will be required to be provided by the County in the interim: Building, Planning, Onsite Wastewater, 911, Roads, and Law Enforcement. Typically, these services are provided through a joint management agreement with the County and include fees paid by the city to the County for receipt of services.

Proposed Tax Rate

The tax rate for the proposed City of Mountain View is \$2.00 per \$1,000 assessed value and would begin to be collected following an election to incorporate, if successful. The Petitioner, in the *Economic Feasibility Study*, finds that the total real market value of all property in the proposed boundary totals \$35,000,000,

⁷ Unless there was an intergovernmental agreement signed by both the Board and proposed City of Mountain View City Council, the proposed City of Mountain View will be required to adopt and administer County zoning within its incorporation boundary outside a UGB.

with an assessed value of all property as \$15,000,000. The Petitioner estimates an income of approximately \$30,000 to cover city expenses resulting from this tax rate. The Petitioner did not cite a source for these estimates for evaluation by the Board as the fact-finding authority in these proceedings.

For several reasons, staff has concerns with the accuracy of Petitioner’s income estimate. In utilizing County GIS and Assessor data, staff estimates the total assessed value of all property in the boundary (including federal lands, which are not subject to local taxation) as \$10,913,276. Of this, approximately \$2,111,586 is currently being deferred through the state’s farm tax deferral program and would continue to be deferred until a property owner opted out of or discontinued the farm use. This leaves approximately \$8,801,690 in assessed value for all property in the boundary, resulting in \$17,603 in estimated tax revenue to the City in year one. This is roughly 58% of the income estimated by the Petitioner in his materials.

In comparison, the City of La Pine established a tax rate of \$1.98/\$1,000. Per the City of La Pine’s budget, the estimated revenue from this tax rate in 2023 is approximately \$477,330. La Pine’s revenue is approximately 27 times that of the proposed City of Mountain View’s and covers an area that is 37 times smaller. Staff has significant concerns on the City’s proposed budget and the validity of the proposed tax rate.

Shared Revenue Sources

The provided Year 1 budget lists a proposed city income of \$195,110. The budget is required by law to assess the economic feasibility for city formation and to establish the basis for the proposed permanent tax rate. However, it is important to note that the future city council is not bound to adopt these budgets. After its first year of operation, the new city is required to follow Oregon budget law, which among other provisions, requires a budget committee be appointed by lay citizens.

Aside from the proposed tax revenue discussed above, the Petitioner also notes the following government shared income revenue sources in the year 1 budget:

- State Allocated Income - \$10,000
- Federal Allocated Income - \$12,000
- County Income - \$8,474.58
 - \$30,474.58 in Total Government Shared Income

The Petitioner has not provided detail on the source of these government allocated funds, nor the basis for including them in the petition. Absent this information, staff assumes the source of state funds on which Petitioner’s analysis is based relate to Oregon Highway Trust Fund Revenues, Liquor Revenues, Marijuana Tax Revenues, Cigarette Tax Revenues, and 9-1-1 Tax Revenues. Distribution of these funds come with several minimum requirements, with which Petitioner has not established compliance or an ability of the proposed City of Mountain View to comply in order to be immediately eligible to receive funds⁸:

⁸ <https://www.orcities.org/application/files/4116/7423/9902/2023SSRFullReport-Revised.pdf>

Highway Tax, Liquor Revenues, and Cigarette Tax: A city must provide at least four of the following municipal services to be eligible for allocation: fire protection, police protection, sanitary sewers, storm sewers, planning or zoning, utility services, or street construction, maintenance, and lighting. Specific data on the actual allocation of these shared revenue sources are not readily available beyond Highway Tax. Generally, for similarly sized cities, annual liquor revenues average approximately \$3,000 and annual cigarette revenues average \$180.

Several small cities did receive Highway Tax in 2022 that are similar in population size to the proposed City of Mountain View, Jordan (130), Grass Valley (157), and Spray (138), although it is notable that each of these cities do provide at least four municipal services and serve a boundary that is a much smaller geographic area, 2.08, 0.5, and 0.29 square miles respectively.

The City of Mountain View would not be eligible to receive funds from these allocations until 1) the City has collected tax revenues for at least one year and 2) at least four of these municipal services are provided, of which only two (planning and streets) are proposed in the year 0-3 plan. Providing services over the entire proposed boundary would require major funding and staffing allocations, which could prove to be difficult from the Petitioner’s proposed budget. It is also notable that Highway Tax funds shall only be used for highway purposes.

9-1-1 Tax: This tax is allocated to 9-1-1 jurisdictions connected to statewide network and shall only be used for 9-1-1 related purposes. The Petitioner is not proposing to take over these services from Deschutes County 9-1-1, therefore would not be eligible for these funds.

Marijuana Tax: Cities with established marijuana operations are eligible to receive these funds. Distributed based on per capita and number of licensed facilities in the city. Until a marijuana dispensary is established, which would require rezoning of land and connection to utilities, the city would not be eligible. Once established, the estimated income based on a city of this size would be approximately \$215.

Staff is not aware of any federal shared revenue that a city of this size would be eligible for, and assumes this number is likely an overestimation.

Other Income Sources

Aside from state shared income, the city is anticipating the following city income in its Year 1 budget:

- SIN Tax Allocated Per Capita - \$3,188
- Highway/Gas Tax - \$11,448
- Building/Planning - \$20,000
- Grants -\$100,000

Staff interprets the reference to SIN tax, although not defined by Petitioner, as Liquor and Cigarette Revenues and Taxes from the state. As noted above, the Petitioner is likely not eligible for these taxes until 1) the city has collected property taxes for at least one year and 2) at least four municipal services are provided. The Petitioner has not provided any additional information on a separate city tax.

Staff noted the viability of receiving Highway/Gas Tax from the State of Oregon above. The Petitioner has not provided any additional information noting a separate city gas tax.

The County currently provides building and planning services for properties in this area. According to the Petitioner, the proposed City of Mountain View will adopt Deschutes County Community Development Department’s current fee schedule but apply a 60% reduction to land use applications and building permits. Hearings Officer fees will be paid by the city. Last year, Deschutes County CDD processed eleven applications within the petition boundary consisting of:

- Conditional Use Permit
- Extension Requests (2)
- Lot of Record Verifications (4)
- Permit Sign-off for Other Agency
- Property Line Adjustments (2)
- Temporary Use Permit

These fees totaled approximately \$9,500. No building permit applications were received or approved. Utilizing the Petitioner’s approach to building and permitting fees, this same amount would result in \$3,800 of revenue if using the Petitioner’s proposed 60% discounted rate. It is worth noting that revenues associated with building permits are restricted under ORS 455.210 to “administration and enforcement of a building inspection program.” They may not be used for general municipal purposes. It is unclear whether the proposed City of Mountain View intends to contract with the County for building plan review and inspection services only, or all components of a building program including permit application take-in and issuance, record keeping, system maintenance, etc., as Petitioner has provided no information on what the City intends to do with regard to these services.

While it is possible that the City will be able to obtain technical assistance for land use planning to develop its own comprehensive plan and land use regulations from the Department of Land Conservation and Development (DLCD), the Petitioner has not provided evidence in the record that they have the resources or even the appropriate zoning and requisite infrastructure to complete those tasks within four years as required in OAR 660-014-0010(4). While not a requirement for the petition, properties zoned EFU and Forest Use will require exceptions to Goals 2 and 14 if these lands are proposed to be within a UGB. Lands surrounding Millican also contain inventoried wildlife resources which will require an Economic, Environmental, Social, and Energy (ESEE) analysis per OAR Chapter 660, Division 16. Both entail rigorous analysis especially at a scale of 1 to 2 square miles. It does not seem plausible that one City employee can accomplish these responsibilities, let alone oversee other land use planning tasks that include but are not limited to developing a Residential Land Needs Analysis, Housing Needs Assessment, Economic Opportunity Analysis, Transportation System Plan, Goal 14 analysis, water and wastewater plans, natural hazard plans, park and recreation plans, and intergovernmental agreements.

The Petitioner states, “that several small cities have generally contracted with the county, the local council of governments, or a private planning consulting firm to prepare the comprehensive plan. Mountain View will seek assistance from all three.” Contracting services with the County have not been discussed with the Board. With the limited projected resources for the City of Mountain View, it is unclear whether the City could provide compensation to the County for any contracted services, the time period during which County services would be requested to be provided, and the economic impact on the County as a result of considering contracting with the City, either on its own or in conjunction with the local council of governments or a private planning consulting firm.

Last, the Petitioner notes that \$100,000 in grant funds are expected to be awarded in year 1, accounting for over 51% of the proposed city revenues. Petitioner has provided no evidence of any grant

applications, precisely what grants they have or would apply for, or how they would otherwise expect to obtain such funds within the timeframe claimed. Staff questions the feasibility of the City receiving this amount of award funding under the evidence presented in support of the petition, particularly considering the proposed limitation of only one employee to manage all city operations.

The largest anticipated cost in the proposed budget, employee payroll, including benefits is proposed as \$46,724. There is no city recorder, administrative assistant, accounting clerk, or engineer. This one person will be responsible for managing the proposed City of Mountain View with duties that include but are not limited to:

- Administration
- Agendas and Minutes
- Budgeting
- Economic development
- Engineering
- Finance
- Grant writing
- Human resources
- Intergovernmental agreements
- Land use planning
- Parks planning
- Public facility planning
- Risk management
- Road maintenance

Without a detailed burden of proof and supporting evidence, one cannot conclude that the city will find a staff person with a skill set that includes the duties listed above for \$46,724, even if Petitioner could establish some evidence that the City would have the means to sufficiently fund such position.⁹ To the extent an employee is hired, the Petitioner has not identified where city business would be located or convened. Petitioner lists a budget item of \$35,250 as operating expenses, which include a city meeting space, equipment, supplies, legal counsel, insurance, utilities, and League of Oregon Cities. An additional \$20,000 is allocated for city hall; another \$50,000 for a future fire department. As mentioned above, the buildings in Millican are in disrepair. The other rural lands encompassed in the petition are not zoned to allow for office uses. This includes 27 dwellings located in the petition boundary.¹⁰ Office uses are not permissible in lawfully established EFU or Forest dwellings.

Contract legal services are estimated to amount to just \$10,000 for the year. There is no evidence to support a finding that this limited estimate would be sufficient to cover actual legal services, considering the numerous documents that will require legal drafting and review. Supplies and equipment for Year One are estimated at \$2,000 and \$1,000, respectively. Meeting space is estimated at \$16,000. All three figures seem remarkably low and are not supported by evidence. There is no discussion or analysis of the location(s) in which meetings will occur at the low estimated cost of \$16,000. Given the zoning restrictions in the petition boundary, it appears to be impractical and beyond the estimated meeting space budget line item to rent meeting rooms for city operations in Redmond, Bend, or the rural communities of Tumalo and Terrebonne.

⁹ According to the Economic Feasibility Study, the one paid position for Years 1 and 2 will be paid with grant funding. There is no evidence in the record describing the funding source.

¹⁰ Eleven are located in the EFU-Alfalfa area which is located in the northwest corner of the petition boundary. Sixteen are located in the EFU-Horse Ridge area.

The League of Oregon Cities provided a letter into the record detailing the many facets of Oregon Law that cities are required to demonstrate compliance with, including budget, procurement, and labor laws among others. This letter outlines in great detail the amount of financial and staff resources required to maintain legal status as a city, of which the Petitioner does not address in the application materials.

The Petitioner, in his August 1, 2023 supplemental application materials email, states that at a bare minimum - expenses for the new city could be as low as \$17,250 including meeting space, insurance, utilities and LOC dues. Staff finds this estimate to be extremely low given the previous information provided.

In summary, staff finds that the proposed tax rate is insufficient to fund the proposed services based on the provided *Economic Feasibility Statement* and recommends denial.

V. LAND USE REQUIREMENTS

Criteria: The Board must determine whether the proposed city can and will be able to comply with relevant statewide planning goals, County Comprehensive Plan goals and policies, and implementing ordinances.

Application of the Statewide Planning Goals and the County Comprehensive Plan

Oregon’s land use statutes, as interpreted by Oregon’s appellate courts, define the responsibility of the county governing body in this proceeding, and, by extension, the nature and scope of the application of various state and local standards and criteria. ORS 197.175(1) explicitly makes county consideration of a petition to incorporate a new city an exercise of county planning and zoning responsibility. The statute requires that:

Cities and Counties shall exercise their planning and zoning responsibilities including, but not limited to, a city or special district boundary change which shall mean the annexation of unincorporated territory by a city, the incorporation of a new city, and the formation or change of organization of or annexation to any special district ... in accordance with ORS Chapters 196 and 197 and the goals approved under ORS Chapters 196 and 197.

ORS 195.025 assigns to county governing bodies the responsibility to coordinate land use planning within their jurisdictions, as follows:

In addition to the responsibilities stated in ORS 197.175, each county, through its governing body, shall be responsible for coordinating all planning activities affecting land uses within the county, including planning activities of the county, cities, special districts, and state agencies, to assure an integrated comprehensive plan for the entire area of the county....

Application of Statewide Planning Goals to Incorporation Petitions

The Oregon Supreme Court has provided useful guidance as to how the goals are to be applied to proposed city incorporations. In Part III. of its decision in the *1000 Friends of Oregon v. Wasco County*

Court, 299 Or. 344, 358-60, 67 (1985) incorporation case, the Supreme Court explained that:

The legislature deemed a county's decision in connection with a proposed incorporation a land use decision which must accord with 'the goals', without exception. We take this general mandate to mean that to the extent a county can conduct a meaningful inquiry as to all 19 goals, it must do so. A county's responsibility at the time it considers a petition for an incorporation election is no greater with respect to Goal 14 (urbanization goal) than with respect to the other goals. It is to determine the compatibility of incorporation and its consequences with the criteria stated in the goal.

Incorporation will transfer to the city actual planning authority for some of the land presently within the county's planning authority. Some of the consequences of incorporation may foreseeably affect land that remains the county's responsibility. The county cannot expect the proponents of incorporation to present a concrete or even a tentative comprehensive plan before the election, and we do not believe that the legislature intended this, although proponents may wish to offer their own ideas for a plan in making their record for approval of the proposed incorporation. The county can, however, expect that the proponents present evidence of the purposes sought to be achieved by incorporation insofar as they bear on future land use, such as the kind of municipal services that the city is expected to provide and the projections about future population and tax base that these purposes assume or necessarily imply. The realism of the purposes and projections and the probable consequences for land use are, of course, open to challenge.

Although this task that ORS 197.175 assigns the counties may not be easy, there is no doubt that the legislature assigned it. We believe that it can be given a practical interpretation...

The seven establishment factors of Goal 14 are designed to be considered in conjunction with the actual drawing of a proposed UGB. Nonetheless, under the test stated in Part II. of this opinion, a county can determine whether it is reasonably likely that the newly incorporated city can and will consider and address the Goal 14 factors when the city eventually draws a proposed UGB, and whether it is reasonably likely that the city can and will ensure that future urbanization is appropriate and not incompatible with Goal 14 and the other goals.

In Part II. of its decision, referred to in the above paragraph, the Court said:

The goals are designed to be applied during a local government's preparation of a comprehensive plan, a process in which a county court's actions with regard to an incorporation petition are not normally a part. As a result, a county's consideration of the goals incident to an incorporation petition differs from a city's or county's application of the goals during the planning process in which specific uses are proposed for specific parcels of land.

... A county discharges its planning and zoning responsibilities with regard to whether a proposed incorporation is in accordance with the goals if the county is satisfied that after a successful incorporation election it is reasonably likely that the newly incorporated city can

and will comply with the goals once the city assumes primary responsibility for comprehensive planning in the area to be incorporated. The county's determination must be supported in the record like any other county land use decision." 1000 Friends of Oregon v. Wasco County Court, 299 Or 344, 360, 367-68, 703 P2d 207 (1985).

The Supreme Court interprets the statutory obligation of the county to exercise its planning and zoning authority concerning incorporations in accordance with statewide planning goals to be imposed directly and specifically by ORS 197.175 so that it continues even after the acknowledgement of the county's comprehensive plan.

Application of the County Comprehensive Plan to Incorporation Petitions

ORS 197.175(1) also requires counties to assure that land use decisions, including decisions approving, modifying, or denying petitions for incorporation, comply with applicable provisions of comprehensive plans and land use ordinances. The Deschutes County Comprehensive Plan implements the statewide planning goals. Like the statewide planning goals, the Comprehensive Plan's goals and policies apply with varying degrees of specificity to the proposed incorporation.

The County is responsible for processing the petition for incorporation as a land use decision in accordance with its comprehensive plan. It is direct and immediate. In addition, Deschutes County must analyze how the proposed city will comply with the County's comprehensive plan pending adoption of the City's own plan and implementing ordinances. ORS 215.130(2) provides that a county's comprehensive plan and implementing ordinances shall continue to apply to land inside a newly incorporated city unless and until the city provides otherwise. However, ORS 197.175 imposes upon a newly incorporated city a separate obligation to comply with statewide planning goals and to make land use decisions in accordance with statewide goals "...if its [the city's] comprehensive plan and land use regulations have not been acknowledged by the commission." The same statute requires cities to adopt comprehensive plans and implementing ordinances.

Based upon these statutes, a newly incorporated city must make land use decisions from the outset in accordance with both the statewide planning goals and with the county's comprehensive plan and implementing ordinances. Therefore, in order for the Board to approve an incorporation petition, the evidence in the record must support findings that: (1) the proposed city can and will comply with both sets of regulations from the outset; and (2) the proposed city can and will adopt, secure acknowledgement, and competently implement its own comprehensive land use plan and implementing ordinances within the time period allowed by the statute.

The evidence in the record must also support findings that the city can and will continue to comply with the County Comprehensive Plan and implementing regulations or that the city can and will be able to adopt and implement its own plan and implementing regulations in a manner consistent with the statewide planning goals that will apply directly to the city's planning and zoning process. This requirement effectively brings the statewide planning goals in through the comprehensive plan and requires the same analysis of goal issues as described in the Wasco case, quoted above.

If the proposed incorporation is found to be inconsistent with the comprehensive plan or applicable zoning ordinances, then the petition will have to be denied or an appropriate plan amendment or land use regulation amendment will have to be adopted in conjunction with any approval.

Petitioner response:

The Petitioner, in his August 1, 2023, supplemental application materials email provides the following response to this criterion.

The proposed incorporation seeks to align with and fully adhere to Oregon's statewide planning goals, prioritizing responsible and sustainable growth that preserves natural resources, supports agricultural and forest lands, and fosters a vibrant and inclusive community. As a newly formed city, we are committed to utilizing the 4-year period provided by the state to develop a comprehensive land use plan in close collaboration with the county and relevant state departments. This process will prioritize citizen involvement, engaging the community's diverse voices to ensure that their interests and needs are incorporated into the decision-making.

We have meticulously met all the necessary requirements to incorporate, ensuring that the proposed boundary correctly includes all lands that would benefit from being part of the proposed city. The taxation rate has been thoughtfully designed to support the proposed services, providing a sustainable financial foundation.

Our incorporation proposal diligently adheres to the requirements set forth in the Oregon Administrative Rules (OAR) and draws lessons from the case of 1000 Friends of Oregon v. Wasco County Court, 299 Or. 344, 358-60, 67 (1985), learning from past experiences to avoid any mistakes in our planning process.

Given the state's requirement of no municipal services until a 2,500 population threshold is achieved, our comprehensive plan may initially be relatively simple. However, we are committed to building a well-thought-out plan that sets the groundwork for future growth while prioritizing essential services as our population reaches the threshold.

By upholding Oregon's statewide planning goals, meeting incorporation requirements, and involving the community throughout the process, our incorporation aims to create a well-balanced and resilient community that fosters economic development, environmental stewardship, and an enhanced quality of life for all residents, now and in the future.

Staff Findings:

A. Compliance with Statewide Planning Goals

Aside from the general information provided above, the Petitioner provides several references to compliance with statewide land use planning goals in the application materials. The Petitioner states in their *Statewide Land Use Compliance Plan* in their July 21, 2023, supplemental materials, that most of the statewide planning goals are accompanied by guidelines. Staff notes that to the contrary, many are administered by OARs which include specific legal requirements. The Petitioner frequently references

DLCD’s website to Oregon’s Statewide Land Use Planning Goals.¹¹ Petitioner’s citations are not a substitute for, and do not constitute substantial evidence.

Goal 1 – Citizen Involvement

In the application materials, Petitioner quotes excerpts from DLCD’s website devoted to Goal 1. He states that the proposed City of Mountain View will develop a committee for citizen involvement to monitor and encourage public participation in planning with help from DLCD. The Petitioner then states a Citizen Involvement Advisory Committee will advise the Land Conservation and Development Commission.

There is no discussion or analysis by the Petitioner whether the incorporation proposal represents a citizen-driven effort nor any discussion or analysis of future plans to incorporate Goal 1 into future city decision making. Deschutes County is not aware of community meetings or workshops held to discuss city goals, services, and boundaries, or governance studies. It is unclear how the proposed City of Mountain View will engage residents if incorporated in such an expansive geographic area. There is no discussion of technology or a web presence. For the La Pine incorporation effort for example, a political action group created a website that contained frequently asked questions, a map of the proposed boundaries, and a statement of purpose. It is not clear how the creation of a comprehensive plan for the proposed City of Mountain View, including required public involvement, would be funded. As stated previously, staff questions the availability of a central meeting place for the community, which could pose challenges to public hearings and citizen participation in city related matters.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities for compliance with Goal 1.

Goal 2 – Land Use Planning

Oregon Planning Goal 2 requires each local government in Oregon to adopt and implement a comprehensive land use plan and zoning regulations. These plans are required to have a factual base to inform the plan and demonstrate compliance with each applicable state planning goal.

The Petitioner, in his July 10, 2023, supplemental email, suggests the following path to adopt a comprehensive plan following incorporation:

The council should officially ask the LCDC county coordinator and field representative to begin the development of comprehensive planning work program and grant application. The county coordinator and the area’s field representative from the Oregon Department of Land Conservation and Development (DLCD) will assist the city in developing a suggested work program - after incorporating. Information gathered for the feasibility study should provide much of the base data for the comprehensive plan and should be shared with the DLCD to assist in determining what tasks still need doing. The work program will be reviewed by the DLCD, and a mutually accepted compliance schedule (work program) will be

¹¹ <https://www.oregon.gov/lcd/OP/Pages/Goals.aspx>
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developed. Historically, the program has provided funds for a portion of the planning effort. Small cities have generally contracted with the county, the local council of governments, or a private planning consulting firm to prepare the comprehensive plan.

Staff is concerned about the connection between this effort and the Petitioner’s proposed budget. As noted previously, staff’s analysis of the information submitted by the Petitioner results in significantly lower anticipated city income and revenue streams than that projected by the Petitioner. As such, it appears doubtful that the city will have financial resources to complete a comprehensive plan creation process. Although DLCD does offer grant programs to assist with these tasks, the new city will likely require planning consultation services, which is not listed in the proposed budget.

Staff also notes the complexity involved with incorporating a city in an area that is comprised largely of resource lands. The Petitioner is obligated to demonstrate whether the proposal on its face can comply with the statewide planning goals and/or whether it is feasible for the new city to develop a comprehensive plan and implementing ordinances that meets the Goals within four years of incorporation. Consideration largely rests on whether exceptions¹² will have to be taken in order to rezone land for urban uses. The proposed boundary consists of lands zoned EFU, Forest Use, Surface Mine, Open Space & Conservation, Flood Plain, and Rural Service Center. There are no existing exception zoned lands such as Rural Residential or Multiple Use Agricultural, that exist in other areas of Deschutes County. If incorporated, the City of Mountain View will be required to take exceptions to Statewide Planning Goals 2 and 14 for redesignation of farmland and for redesignation of land from rural to urban scale uses. The Petitioner contemplates a UGB of 1 to 2 square miles. Unfortunately, the Petitioner has provided no evidence in the record that it is plausible to develop findings justifying an exception for up to 1,280 acres of EFU and/or Forest Use zoned land.

The Bureau of Land Management, Prineville District, Deschutes Field office submitted a letter to the record noting that BLM land within the boundary is not available for disposal or community expansion, meaning that the land is not eligible for donation, sale or transfer and will remain under BLM management. This land is also not eligible for taxation. With over 75% of land in the boundary designated as federal land, staff has concerns regarding the functionality of the city and urban growth boundary, and feasibility for urban level development. With small parcels of private land intermixed with large tracts of public land, development of roads and utilities to serve private development at an urban level would be extremely difficult.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities for compliance with Goal 2.

Goal 3 Agricultural Lands

¹² An exception is a decision to exclude certain land from requirements of one or more applicable state goals (commonly relating to Goal 3 – Agricultural Land, Goal 4 – Forest Land, and Goal 14 – Urbanization).

In *1000 Friends vs. Wasco County*, the Oregon Supreme Court found that a County can only look to land within the area proposed for incorporation when identifying the predominant soil capability classifications for the purpose of identifying agricultural lands.

In the application materials, the Petitioner quotes excerpts from DLCD’s website devoted to Goal 3. The petitioner in his *Statewide Land Use Compliance Plan* notes:

Mountain View will be sure to comply and designate EFU zones within its boundaries as necessary.

The proposed boundary includes 134,517 acres (EFU-Alfalfa: 628 acres, EFU-Horse Ridge: 133,88 acres) of land planned and zoned for agricultural use under Goal 3 in the County Comprehensive Plan. The crop profiles for these subzones as described the Deschutes County Comprehensive Plan are irrigated hay and pasture (EFU-Alfalfa) and rangeland grazing (EFU-Horse Ridge). The act of incorporation *per se*, does not affect agricultural land. The land remains planned and zoned for agricultural use until such time as the City of Mountain View adopts a Comprehensive Plan and rezones the land for other uses in compliance with the statewide planning goals. Impacts to EFU land would not occur until they are included within a UGB.

The Petitioner, in the application materials, describes a UGB consisting of 1 to 2 square miles centered around the Rural Service Center Millican. Most of those lands are currently zoned EFU. The City of Mountain View will be required to demonstrate that EFU lands are needed for development to include them in the UGB. There may be some *perceived* impacts to EFU lands included within city boundaries due to the fact that, in most cities, EFU lands are not included within city boundaries. Cities are established primarily to provide urban infrastructure, urban levels of service, and local governance. There may be potential impacts to farm practices, real or perceived, due to future urbanization.

However, the Petitioner has not demonstrated why city boundaries are being proposed or are necessary in this particular area of the county, which is overwhelmingly zoned EFU. Outside of the Rural Service Center of Millican, which is currently vacant and in need of major repair, there is no development history, pattern, or urban infrastructure that dictate a governance solution for a municipality. Staff finds no demonstration that this land is not fit for farming purposes and should be reclassified for another use.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 3.

Goal 4 – Forest Lands

In the application materials, the Petitioner quotes excerpts from DLCD’s website devoted to Goal 4 and states there is no plan to change the use of any forest or BLM land within City limits.

The proposed boundary includes 28,637 acres of land planned and zoned for forest use under Goal 4 in the County Comprehensive Plan. Most of this land is owned and governed by the federal

government. It includes the Pine Mountain Observatory. Similar to the analysis for agricultural lands, the incorporation *per se*, does not affect forest land. The land remains planned and zoned for forest use until such time as the City of Mountain View adopts a Comprehensive Plan and rezones the land for other uses in compliance with the statewide planning goals. Impacts to forest land would not occur until they are included within a UGB. There may be some *perceived* impacts to forest lands included within city boundaries due to the fact that, in most cities, forest lands are not included within city boundaries. Cities are established primarily to provide urban infrastructure, urban levels of service, and local governance. There may be potential impacts to forest practices, real or perceived, due to future urbanization.

The Petitioner has not demonstrated why city boundaries are being proposed for or necessary in this particular area of the county which contains significant forest zoned property. Outside of the Rural Service Center of Millican, which is vacant and in need of major repair, there is no development history, pattern, or urban infrastructure that dictate a governance solution for a municipality. Staff finds no demonstration that this land is not fit for forest purposes and should be reclassified for another use.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 4.

Goal 5 – Open Spaces, Historic, Scenic and Natural Resources

The petition for incorporation contains several acknowledged wildlife inventories pertaining to Sage-grouse (93,996 acres), Sensitive Bird & Mammal Habitat (6 sites), Antelope (80,399 acres), and Deer Winter Range (113,079 acres). As it pertains to Goal 5, there are also 2,838 acres zoned Surface Mine, 701 acres zoned Open Space & Conservation and 1,424 acres zoned Flood Plain. These comprehensive plan designations and regulations remain in place until the City adopts its own. However, upon incorporation, the City will be required to produce an ESEE analysis per OAR Chapter 660, Division 16.

In the Petitioner’s *Statewide Land Use Compliance Plan* provided in the July 21, 2023, submittal, the Petitioner states the following:

Mountain View will in short review land uses allowed on or near each resource site that might have a negative impact on the resource. It will then decide on a level of protection appropriate for each resource site and adopt codes to put policies into effect. This will be implemented by following State rules for implementing Goal 5 that have been adopted and amended over the years. As stated above for goal 4- there are no current plans to change the use of forest or BLM lands now or within the next 25 years.

Oregon Department of Fish and Wildlife provided comments expressing concern with the Petitioner’s proposal:

The proposed area of Mountain View is located within biological elk and mule deer winter range and essential pronghorn habitat. These areas are designated as category 2 habitat as defined

by the ODFW Fish and Wildlife Habitat Mitigation Policy. Under the mitigation policy, it is the policy of ODFW to recommend mitigation for unavoidable impacts to wildlife habitat. The mitigation goal, if impacts are unavoidable, is no net loss of either habitat quantity or quality and to provide a net benefit of habitat quantity or quality through reliable in-kind and in-proximity mitigation. As proposed, this application does not meet these criteria. Any future development in the proposed city would be subject to these standards.

The Petitioner’s *Economic Feasibility Study* references Sage-grouse habitat specifically:

Mountain View should develop a rehabilitation program with ODFW to restore populations of the Greater Sage-grouse. Hatching centers and breeding programs are among possible solutions to combat declining populations. Working with SE counties in Oregon may be a solution for sourcing fertile eggs.

In response, Oregon Department of Fish and Wildlife provided the following:

In addition, the proposed city boundaries overlap greater Sage-grouse core habitat and low-density habitat (including both the existing 2011 Greater Sage-grouse Conservation Assessment and Strategy for Oregon definition, and the draft 2023 core habitat and low-density habitat boundaries). As described under ODFW’s Greater Sage-grouse Conservation Strategy for Oregon mitigation policy, adverse direct and indirect impacts on Sage-grouse and Sage-grouse core and low-density habitats must be mitigated by the developer. The application cites potential to establish a greater Sage-grouse rehabilitation and breeding facility to ‘restore populations’ of Sage-grouse. A rehabilitation and breeding facility in Deschutes County is not an idea supported by ODFW, and not adequate mitigative measures. As proposed, this application does not meet mitigation criteria.

The dominant habitat type within the proposed area is sagebrush habitat, which is described as a “Strategy Habitat” in the Oregon Conservation Strategy⁵. The reduced quality and quantity of this habitat type across Central Oregon influences many wildlife species including other “Strategy Species” such as the ferruginous hawk, loggerhead shrike, sagebrush sparrow, Brewer’s sparrow, northern sagebrush lizard, Washington ground squirrel, and pygmy rabbit. Despite the natural resource considerations included in this proposal, increased development associated with the incorporation of Mountain View will have a net negative effect on the habitat values provided by sagebrush and the wildlife that depend on this habitat type.

ODFW goes on to recommend that the County ensure there is a compensatory mitigation plan to address County-recognized Goal 5 habitats as well as ODFW defined Category 2 habitats prior to approval of the petition.

Similarly, the BLM states in their letter that they maintain a disturbance cap of 3% not to exceed a 1% increase each decade on development on BLM land within the boundary. New infrastructure, roads, and energy development fall within this cap. The Petitioner has not addressed how the city will manage these disturbance caps on both federal and private lands.

The Petitioner does not address with substantial evidence in the record the responsibility and analysis that come with developing a Goal 5 inventory for wildlife, open space, or scenic resources. There is no documentation or detailed analysis of Deschutes County's acknowledged Goal 5 inventories, of which the city would be required to implement.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 5.

Goal 6 – Air Water and Land Resources Quality

The Petitioner's *Statewide Land Use Compliance Plan* for Goal 6 states:

*the proposed City of Mountain View will consider protection of air, water and land resources from pollution and pollutants when developing comprehensive plans...
As advised by the current watermaster for Mountain View – current private well use shall continue to be the primary water source for citizens, as allowed under the state water use law – meeting single lot exemptions (15,000 gallons). No ordinances or state laws are in effect to prohibit new wells for new homes under this exemption, and for personal water consumption use. This plan of action will be sufficient until a larger population is present (2,500 or greater).*

The Assistant Watermaster for the Upper Deschutes Basin provided a letter into the record on September 8, 2023.

- If the proposed city plans to have water/sewer infrastructure the following should be considered:*
- *In the western extent of the project area, well depths are 900-1100 feet deep with static wells near 800 feet below land surface. In the central and eastern project extents, well depths are 400-600 feet deep o with static water levels near 450 feet below land surface. OWRD well log database shows several drillings resulting in dry wells.*
 - *Well yields in the proposed area are generally quite low (median yield = 15 gpm) and would have difficulty supplying enough water for a municipality.*
 - *The nearest observation wells have declined persistently since at least the mid-1990s. Because of these declines and the low estimated well yields, a quasi-municipal or municipal water right in the proposed boundary is unlikely.*
 - *The proposed area falls within the Deschutes Basin mitigation zone of impact. Water right application from this area would need to acquire mitigation credits to offset any new water right uses. Mitigation credits in this region are limited.*

The information from Oregon Water Resources Department outlines the practical limitations to water availability in the proposed boundary area, which in turn will impact the type and scale of development allowed within the boundary. The Petitioner has not provided information regarding plans for municipal water service, although OWRD notes that acquisition of municipal water rights

are unlikely. Additionally, OWRD notes that drilling for individual wells could be extremely costly and may not provide enough yield to support urban levels of development.

One purpose of incorporation is to establish urban levels of services, which ultimately requires urban density. Relying on domestic wells and onsite wastewater treatments systems necessitates a land use pattern of at least 1 acre or larger lots or parcels due to state setback requirements from the well to the septic system, drainfield, and reserve area.

The Petitioner has not provided sufficient information to the management of water and wastewater within the proposed city. OWRD shared information noting challenges to use of individual wells as well as acquisition of municipal or quasi-municipal water rights. The zoning of the area is not conducive to establishment of community water and wastewater systems.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 6.

Goal 7 – Areas Subject to Natural Disasters and Hazards

The Petitioner’s *Statewide Land Use Compliance Plan* for Goal 7 states,

Mountain View will address natural hazards in our comprehensive land use plan. This will be accomplished by adopting a natural hazard inventory and supporting plans and policies. A limited amount of planning grant money is available through DLCD to help communities address these planning needs and will be applied for.

There is a Federal Emergency Management Agency flood hazard area within the proposed petition boundary. This flood hazard area is regulated by the County through its Flood Plain zoning. The city will have to develop and maintain regulations to meet federal requirements in order to receive federal flood insurance. The Petitioner has not demonstrated it is feasible for the proposed city to do so.

Wildfire hazard is extreme in rural Deschutes County. Lands within the petition boundary are unprotected. There is no rural fire protection district serving this area. In the *Economic Feasibility Study*, the Petitioner identifies \$50,000 for a future fire station. However, there is no analysis or proposed timeline for establishing a fire district or fire station, nor any evidence for a determination of whether it is plausible to establish one. By its own admission, the Petitioner states,

the lack of a fire district puts local residents in harm’s way and creates a situation that does not adequately serve the needs of the new city residents.

The Bureau of Land Management, in their September 19, 2023, letter, discuss the process for a mutual aid agreement for fire protection.

Dr. Aasen indicates that much of the needed infrastructure and services will continue to be provided by existing sources for several years or more, and that developing a local fire district may not occur for up to 10 years. For the BLM to develop a Mutual Aid Agreement (Agreement) through a Memoranda of Understanding to partner with Mountain View in wildfire suppression, Mountain View will have to establish a fire department. The minimum standard would be a state-approved rangeland fire protection association, which is made up of willing landowners who meet standards for training and equipment (engines, water tenders, radios, and personal protective equipment) and adequate liability insurance. Without this Agreement, suppression costs for wildfires that originate on private land within the incorporated area would be the responsibility of Mountain View. In addition, without this Agreement, the BLM would be limited in responding to private land ignitions.

Staff notes that the establishment of a city requires a Mutual Aid Agreement with the BLM and a fire department as part of this agreement, to ensure ongoing fire protection on private land in the unincorporated area. The Petitioner’s *Economic Feasibility Statement* list this service as being provided between years 0-10. This timeline for service, in combination with the limited tax revenue, would lead to a significant gap in fire protection for private property owners if the city were to incorporate.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 7.

Goal 8 – Recreational Needs

The Petitioner’s *Statewide Land Use Compliance Plan* for Goal 8 states,

Mountain View will plan for the recreation needs of our residents and visitors. Our goal will place a priority on non-motorized forms of recreation, and recreation areas that service high-density populations with limited transportation options and limited financial resources. Mountain View will also place a priority on recreation areas that are free or available at a low cost to the public.

In the Petitioner’s *Economic Feasibility Analysis*, parks and recreation services are listed as a long-range goal (15-30 years) for the city. The city has not accounted for the creation of a parks district or provided any detail on parks maintenance or acquisition in the proposed budget. The proposed City of Mountain View is also not within a boundary of a park and recreation district. Staff is concerned that the reference to this Goal 8 requirement a “long-range goal” means that the Petitioner will not be able to meet the intent of Goal 8 within the first four years of operation as a city.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 8.

Goal 9 – Economic Development

The Petitioners' *Statewide Land Use Compliance Plan* states the following:

Mountain View and all local governments should have a working inventory of areas suitable for economic growth that can be provided with public services. These inventories primarily focus on planning for major industrial and commercial developments, and having a ready supply of land appropriately zoned and located for those opportunities and local investments. As with all areas of the comprehensive plan, the amount of land planned for economic development will be adequate for a 20-year supply. The economic development plans formed by Mountain View will use one or more market incentives to encourage the type of development the new city would like to see, as mentioned in the petition- with a goal of creating a green community that can be showcased throughout the United States. A few possible initiatives may include tax incentives or disincentives, land use controls, or preferential assessment.

Aside from this information, the petition contains no economic strategic plan or demographic profile. With the exception of the Rural Service Center of Millican, which is currently vacant and in need of major repair, there are no lands in the petition boundary currently planned and zoned for industrial, commercial or mixed uses. The complication of a Goal exception to rezone existing EFU and potentially Forest zoned land could also create barriers to providing a sufficient land base for employment.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 9.

Goal 10 – Housing

The Petitioner offers a general summary of Goal 10 and acknowledges in the Petitioner's *Statewide Land Use Compliance Plan* and *Economic Feasibility Study* that future residential uses will rely on domestic wells and onsite wastewater systems. Additionally, the Petitioner states,

Lots that are generally suited and developed with residential size restrictions will be converted to residential lots of record (5-40 acres). Lots should not be reduced to less than 5 acres to conform with ODFW regulations and best practices for development in the Wildlife combining zone and Sage-grouse habitat. Large lots (100+ Acres) that have not had farm tax deferral status, or farming operations (within the last 5 years) will be considered for future residential, commercial, and industrial development. Future and existing lot dimensions will have a five acre or larger minimum size requirement.

Goal 10 specifies that each city must plan for and accommodate needed housing types including for multifamily. It requires each city to verify population projections, prepare buildable land inventories, project future land needs, and plan and zone enough buildable land to meet those forecasts. Rural exception lands or water or sewer districts do not exist within the proposed petition area. It is unclear if the existing EFU, Surface Mine, and Flood Plain zoned taxlots within a one-to-two-mile square mile of Millican are lawfully established units of land (lots of record) for development purposes. This is the area the Petitioner contemplates for a UGB. Petitioner's submittals do not include any figures or analysis regarding population projections, buildable land

inventories, projected future land needs to support planning and zoning for adequate buildable land in the proposed City.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 10. There is no evidence that the City will provide adequate land for a full range of housing types at urban densities for residents at various income levels.

Goal 11 – Public Facilities

In response to this goal, the Petitioner quotes excerpts from DLCD’s website devoted to Goal 11 and offers the following in his *Statewide Land Use Compliance Plan*

Mountain View acknowledges that each city with a population greater than 2,500 is required to create a public facilities plan that meets its current and long-range needs. If a county is home to an unincorporated community, the county too must develop and adopt a community public facility plan that regulates facilities and services. A city with an urban growth boundary (UGB) cannot include, as part of its public facilities plan, the intent to serve areas beyond the UGB, except in very specific and limited circumstances. Within an urban growth boundary, public facilities should be in greater supply in areas planned for higher densities, and available at appropriate levels of service throughout the city. Outside an urban growth boundary, public facilities should not, as a matter of practice, be provided. For example, public sewer service is only allowed outside of a UGB to alleviate an existing health hazard, and public water service is only allowed if it is not used as justification to increase existing levels of allowed rural development. Examples of this would be areas zoned for "rural residential" use. The city's public facilities plan should plan for provision of public services to "urbanizable" areas, lands that are within the city's UGB but don't have public facilities available to them yet.

Goal 11 speaks to a variety of public facilities and services to manage the needs of residents. The petition boundary contains no water, sewer, or fire protection district. The Deschutes County Sheriff’s Office provides law enforcement services to the unincorporated area. The Bend-La Pine School District and Crook County School District serve the proposed City of Mountain View. The *Economic Feasibility Study’s* long-term goals identify a local fire district (0-10 years) and the establishment of a municipal water service, sewage disposal, garbage disposal and collection, parks and recreation, library services, local school district and transportation, and elderly and low-income housing assistance within 15-30 years.

Goal 11 requires the proposed City of Mountain View to develop a “timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.” It requires the new city to determine its needs for facilities and services based on development plans and population projections and assure that needed facilities and services are available in advance of or concurrent with development. Staff is concerned that the lack of budget and staff resources will lead to significant service gaps for community members within the boundary.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 11.

Goal 12 – Transportation

The Petitioner quotes excerpts from DLCD’s website devoted to Goal 12 and states in the *Statewide Land Use Compliance Plan* that a Transportation System Plan is not required until “the population threshold is achieved”.

There is no analysis of existing modes of transportation, transportation facilities, the Transportation System Plan (TSP) or transportation studies that have been completed for the area. Additionally, the existing infrastructure in the boundary includes a complex network of County, State, and Federally managed rights of way. The proposed City of Mountain View will be required to develop a TSP in compliance with OAR 660-12, the Transportation Planning rule (TPR). The TPR applies differently to UGBs greater than 25,000 than those with less than 25,000, but in all respects, the TSP must be consistent with land use. Staff is concerned about staff and financial resources to complete this highly technical work.

In regard to maintenance, the *Economic Feasibility Study* states “city roads will begin improvements year 0 of city incorporation.” The Petitioner provides a tentative budget for road maintenance but does not detail plans on acquiring equipment or personnel to conduct the maintenance. A comment from the County Engineer notes:

The actual cost of \$262,146 per year (present value) to operate and maintain the County roads within the proposed city boundary at current service levels far exceeds the Year One \$31,448 and Year Three \$52,134.88 streets operations and maintenance costs proposed by the Petitioners in their economic feasibility analysis.

Staff is concerned that the Petitioner has underestimated the cost and staff resources required to maintain County roads (not including Highways or Federal roads) in the boundary and if incorporated, lack of maintenance could lead to serious public health and safety concerns.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 12.

Goal 13 – Energy

The Petitioner quotes excerpts from DLCD’s website devoted to Goal 13. The *Economic Feasibility Study* states,

Within the long-range plan, utilities should be considered in a manner that fits harmoniously within the natural surroundings. Sustainable development of energy sources will take priority. Examples: Solar, Geothermal, Wind, and other technological advances.

Water studies and sources will take priority, ensuring domestic populations do not harm ecosystems or re fill capacity. Rain and snow water collection, along with greywater reuse systems will be key to success in this region for long term sustainability. Green building methods should always be considered to ensure the impact from development is limited in scope. This will also set a precedent for the region. Lifetime of development projects should strive for buildings and residences that can be maintained sustainably. Along with affordable building and housing development fees, Mountain View will strive to be a community leader in developing with nature. This means living sustainably with the local animals and requiring greenspace (BLM) and residential landscaping fit the needs of the local ecology. Dark Skies initiatives should continue in collaboration with the Pine Mountain Observatory. This means the city will not develop or implement street lights.

It is not clear from the proposed budget if and how these types of programs will be funded. Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 13.

Goal 14 - Urbanization

In *1000 Friends of Oregon v. Wasco County Court*, 299 Or. 344, 358-60, 67 (1985) the Oregon Supreme Court determined that a County is not required to adopt a Goal 2, part II, exception to Goal 14 in order to approve a petition for incorporation. Land within a newly incorporated area shall retain the same County Comprehensive Plan and Zoning designations as was existing, until the new City adopts their Urban Growth Boundary, along with their own plans and designations.

To comply with Goal 14, the Supreme Court noted that proponents of the petition must provide evidence of the purposes sought to be achieved by the incorporation, as it pertains to the future of land use, such as the kind of municipal services the city is expected to provide, tax, and population projections.

The Petitioner quotes excerpts from DLCD’s website devoted to Goal 14. The *Statewide Land Use Compliance Plan* states the following:

Like every incorporated city in the state, Mountain View will develop a UGB. The UGB will be designated in the city's comprehensive plan. The land is inside a UGB, will be considered urbanizable. When designating an urban growth boundary, Mountain View city will plan to include a twenty year supply of land for housing, employment, industry, open space and recreational needs. The UGB will also provide plans for transition from urban to rural land uses, to avoid conflicts. Within the UGB, Mountain View once at or above the 2,500 population threshold; will create a transportation system plan and public utility plan. And lastly, our comprehensive plan will encourage efficient use of the land, to provide for a more livable, walkable, and sustainably built community.

The proposed incorporation has no immediate effect on Goal 14. However, Goal 14, along with Goal 2 are significant because they require the proposed City of Mountain View to establish a UGB. Goals 2 and 14 are evaluated together due to the fact that any resource lands being considered for a UGB will require an exception. The proposed City of Mountain View will be required to

demonstrate its need for urbanizable land coupled with an analysis of Deschutes County’s twenty-year population projections. When the City establishes its UGB it will have to consider the land need factors of Goal 14, which requires efficient accommodation of identified land needs, an orderly and economic provision of public facilities, comparative ESEE analysis, and compatibility of proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.¹³

The petition for incorporation proposes an unusual situation where the city boundary will be significantly larger than the UGB. The Petitioner states the UGB will most likely encapsulate a one-to-two-mile radius from the Millican Store, leaving approximately 263 square miles of incorporated land subject to county zoning, but city control. There is no municipality in Oregon that contains such a discrepancy between its UGB and incorporated boundary. Outside of the Rural Service Center of Millican, there is no development history, pattern, or urban infrastructure. The proposed City of Mountain View contains no rural residential exception lands or utility or service districts.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 14, most notably in compliance with location factors of Goal 14 and the priority scheme of ORS 197.298. It is not reasonable to expect that it is feasible for the new city to propose a UGB that ensures that future urbanization is appropriate and not incompatible with Goal 14 and the other statewide planning goals based on the lack of evidence in the record, the rural character of the area and the lack of urban infrastructure.

In summary, staff finds that the Petitioner has not provided sufficient information to demonstrate that the City can reasonably comply with Statewide Planning Goals following incorporation and recommends denial.

B. Deschutes County Comprehensive Plan

The Petitioner did not provide findings addressing the Deschutes County Comprehensive Plan. Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View can or will be able to comply with the Deschutes County Comprehensive Plan.

C. Deschutes County Implementing Ordinances

The Petitioner did not provide findings on Deschutes County Code Title 17 (Subdivisions) or Title 18 (County Zoning). The new city will be required to implement these regulations until they adopt and receive acknowledgment from the state for their own implementing regulations The Petitioner describes a Year 0-3 plan that mentions,

¹³ OAR 660-015-0000(14)
File No. 247-23-000587-TA

The City of Mountain View will develop long range zoning and economic plans to ensure the residents of the area have equal and adequate opportunities to develop, grow, and sustain the economic welfare of the area. This will start immediately (day 0) upon incorporation.

It is not clear from the proposed budget how this work will be funded or how the city will implement the County Comprehensive Plan and implementing ordinances until the city adopts its own plan and regulations.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View can or will be able to comply with the Deschutes County implementing ordinances.

VI. CONCLUSION & NEXT STEPS

Conclusions

As noted above, in order to approve the petition for incorporation, the Board must find that the record supports findings by the Board that:

1. The proposed boundary correctly includes all lands that would be benefited from being in the proposed city.
2. The taxation rate will support the proposed services.
3. The proposed city can and will be able to comply with relevant statewide planning goals, County Comprehensive Plan goals and policies, and implementing ordinances.

Staff finds that the Petitioner has not demonstrated with substantial evidence in the record that a minimum of 150 residents live in the proposed incorporation boundary, which is required per ORS 221.020.

Staff finds that the configuration of the proposed boundary includes primarily (75% federal owned land) that will not be benefitted from being in a proposed city. Staff finds the configuration of the boundary, in which private land is interspersed among large tracts of publicly owned land, poses significant challenges to promote orderly and efficient urban scale development. Land within the 265-square mile boundary is currently used for farming, ranching, and conservation of sensitive species such as Sage-grouse, elk, antelope, and mule deer. There is no development history, pattern, or urban infrastructure that dictate a governance solution for a municipality within the proposed incorporation boundary, or the area at large. Therefore staff finds that the benefit of incorporation and inclusion of property in the proposed boundary has not been adequately demonstrated.

Staff finds that the proposed taxation rate will not support the proposed services. The Petitioner’s *Economic Feasibility Statement* includes insufficient and incorrect information regarding potential city income and revenue sources. The tax revenue has been miscalculated by the Petitioner and will only account for approximately \$17,608 in the first year compared to the amount of \$30,000 (a difference of 42%) as stated in the Petitioner’s materials. The tax rate for the proposed City of Mountain View will not

cover the cost of creating, operating, and maintaining a city of approximately 160 residents, spanning 265 square miles regardless of whether it contains a UGB of one-to-two square miles. This amount does not cover the cost of any expense category, let alone the anticipated total expenses of \$183,923 in year one.

Staff finds that the Petitioner has not provided sufficient information to determine if the city can and will be able to comply with relevant statewide planning goals, County Comprehensive Plan goals and policies, and implementing ordinances. It is not feasible for the city to meet any of the statewide planning goals though the establishment of a UGB within four years as required in OAR 660-014-0010(4). Based on existing zoning, a UGB would require exceptions to Goals 2 and 14. The incorporated city outside of the UGB would include resource and Goal 5 land that would have to be zoned similarly to the existing County zones to meet the statewide planning goals and be consistent with the County Comprehensive Plan. The Petitioner has not demonstrated that it is reasonably likely that the newly incorporated city can and will comply with the goals once the city assumes primary responsibility for comprehensive planning in the area to be incorporated. Lastly, there is no evidence in the record that the proposed City of Mountain View can and will continue to comply with the Deschutes County Comprehensive Plan and implementing regulations or that the city can and will be able to adopt and implement its own plan and implementing regulations in a manner consistent with the statewide planning goals that will apply directly to the city's planning and zoning process.

For all the foregoing reasons set forth in this Staff Report, staff recommends denial of the proposed petition to incorporate the City of Mountain View.

Next Steps

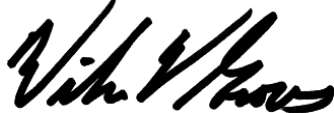
At the conclusion of the public hearing, the Board can choose one of the following options:

- Continue the hearing to a date and time certain;
- Close the oral portion of the hearing and leave the written record open to a date and time certain;
- Close the hearing and commence deliberations; or
- Close the hearing and schedule deliberations for a date and time to be determined.

DESCHUTES COUNTY PLANNING DIVISION



Written by: Nicole Mardell, AICP, Senior Planner



Reviewed by: Will Groves, Planning Manager



Reviewed by: Peter Gutowsky, Community Development Director



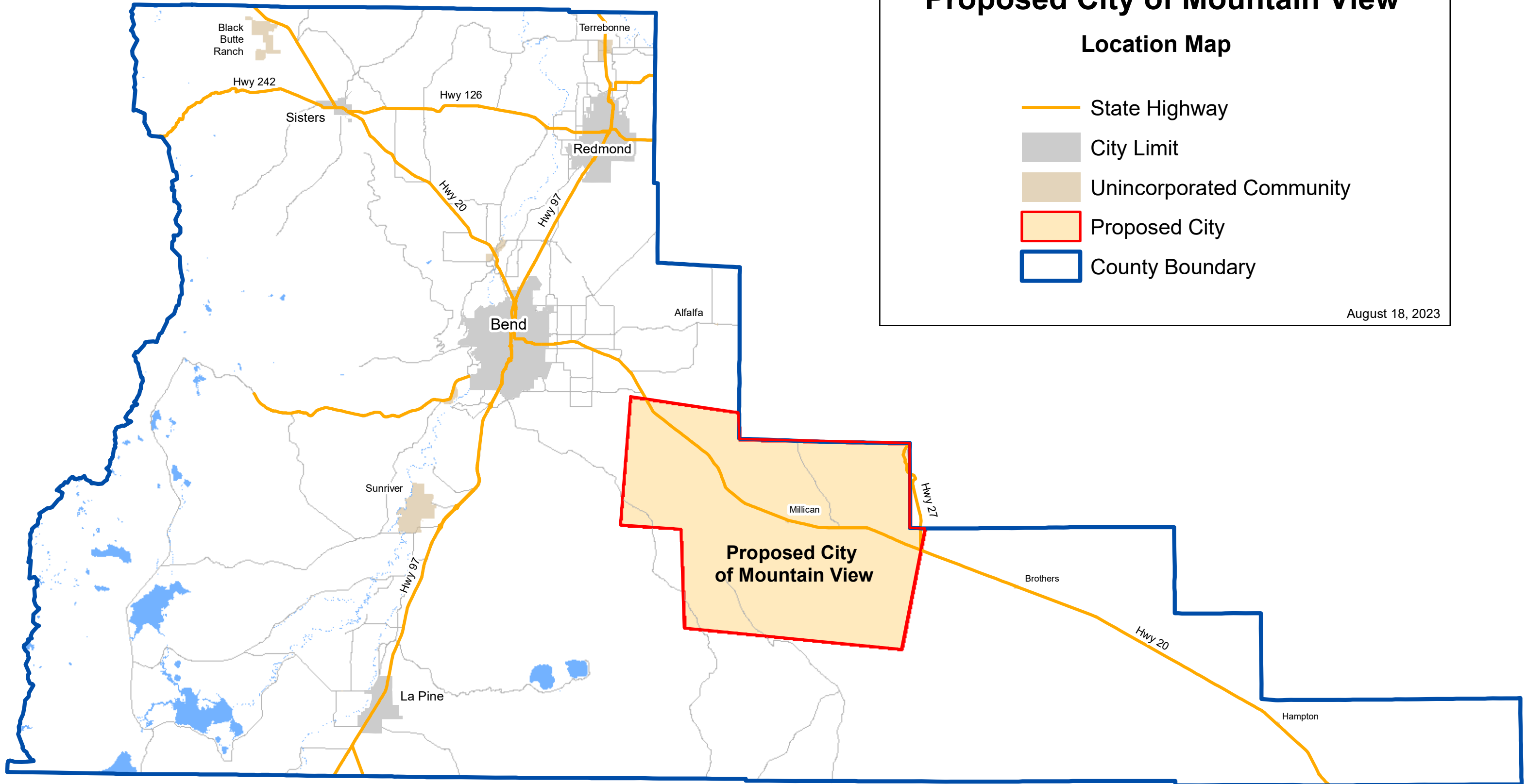
1" = 6.5 Mi.

Proposed City of Mountain View

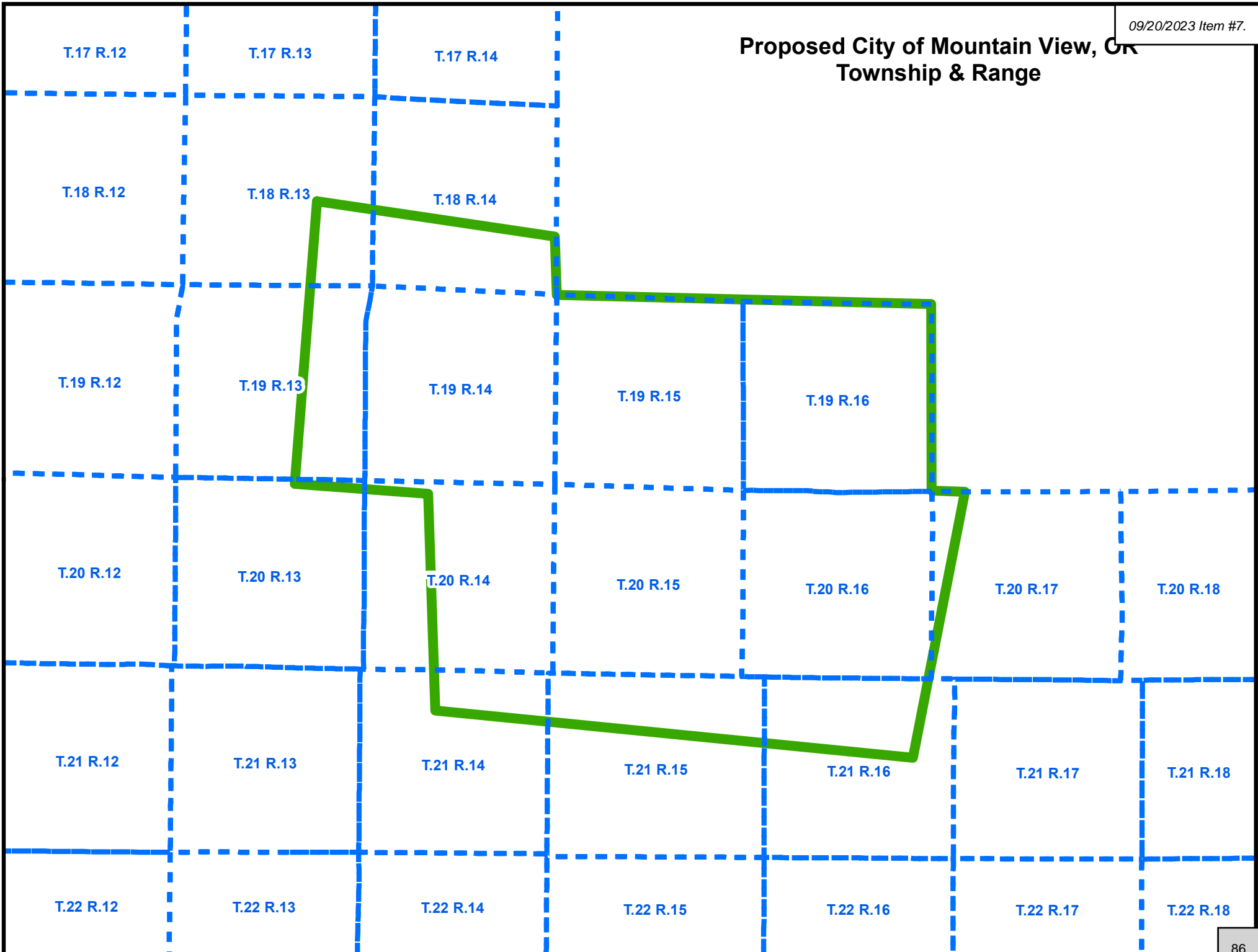
Location Map

-  State Highway
-  City Limit
-  Unincorporated Community
-  Proposed City
-  County Boundary

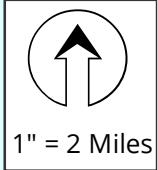
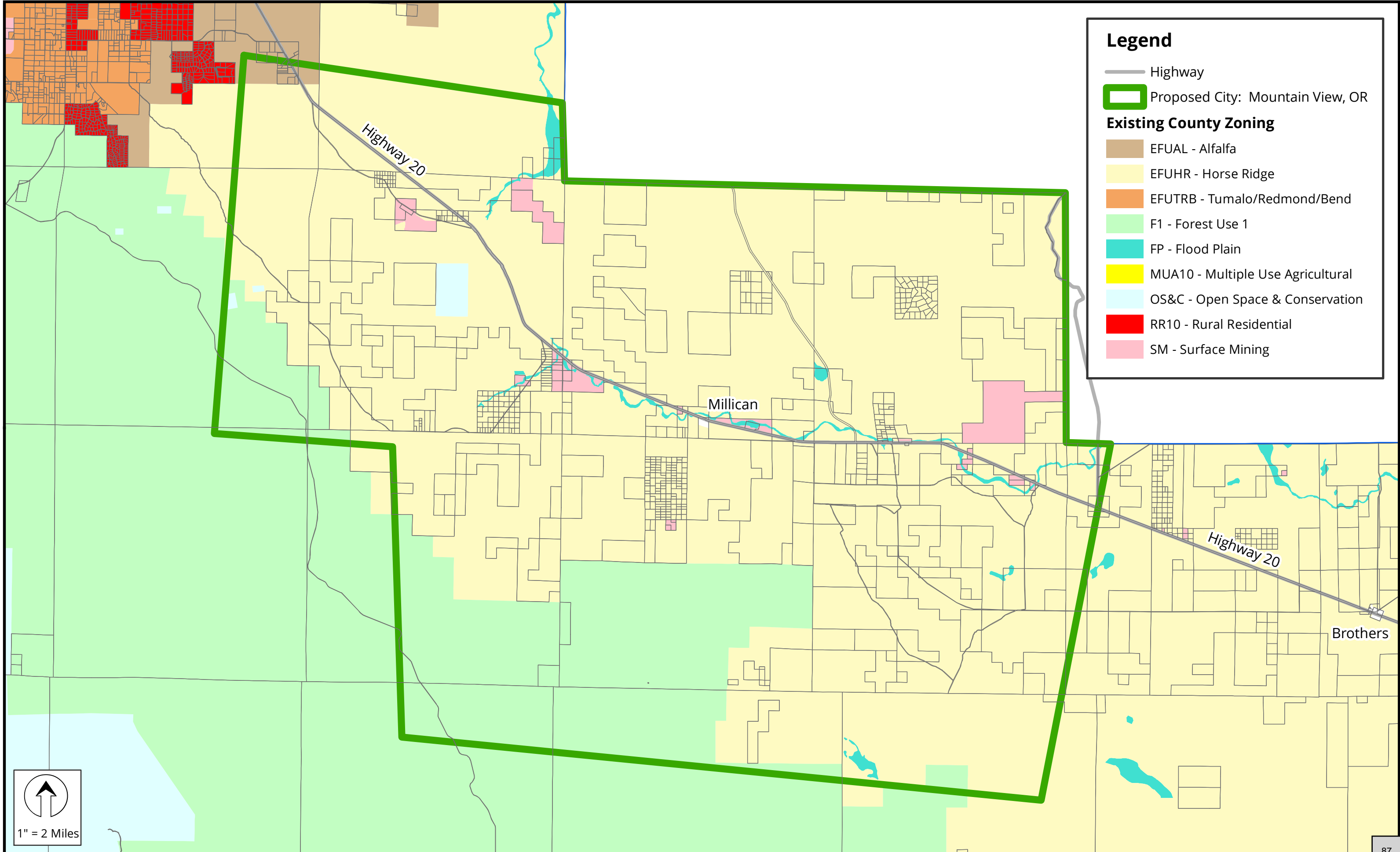
August 18, 2023



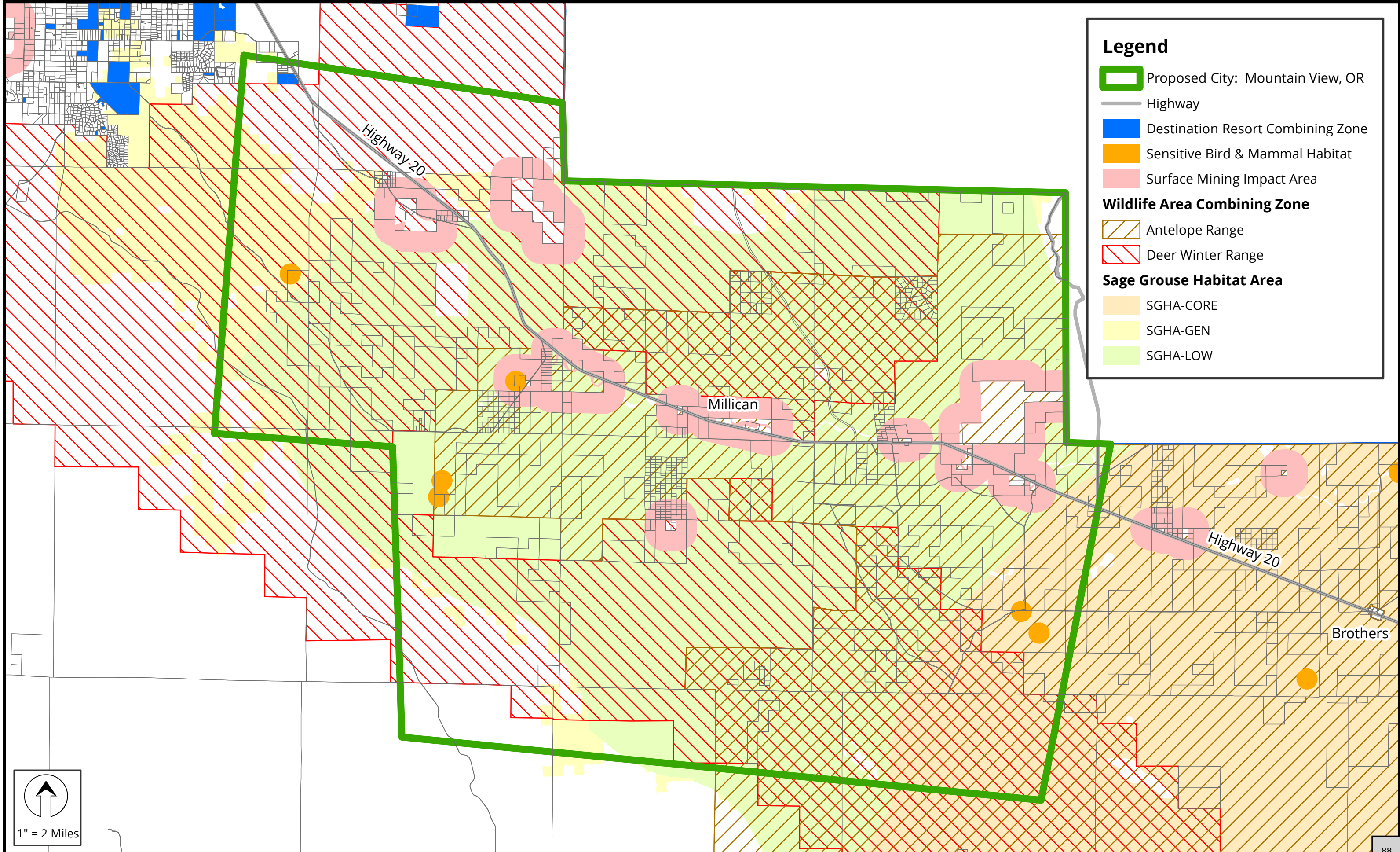
Proposed City of Mountain View, OR Township & Range



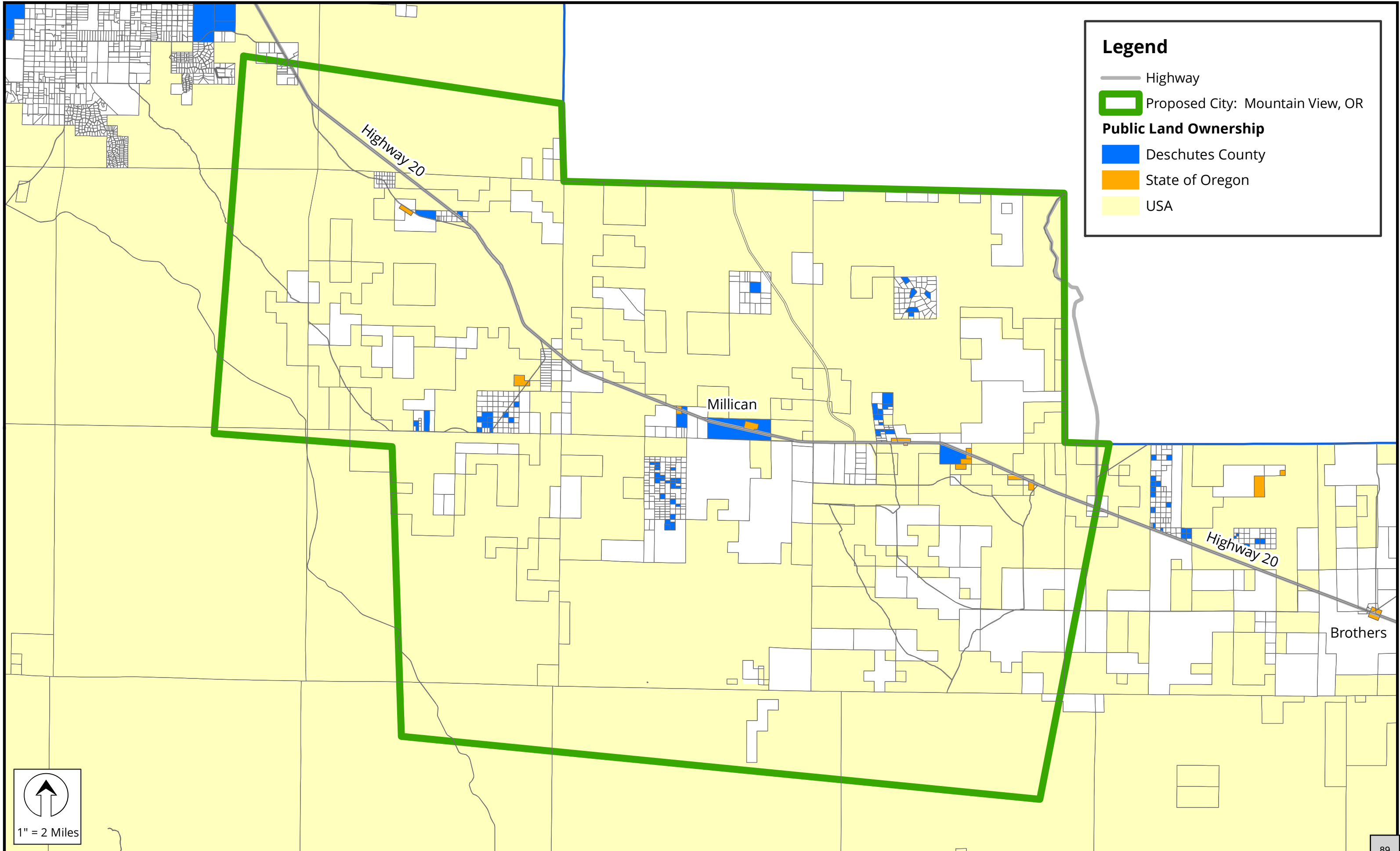
Proposed City of Mountain View, Oregon - Existing Zoning



Proposed City of Mountain View, Oregon - Combining Zones



Proposed City of Mountain View, Oregon - Public Land Ownership





BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 20, 2023

SUBJECT: AJ Tucker Building Removal

RECOMMENDED MOTION:

Move approval of submission of application to the City of Bend for removal of the AJ Tucker Building located at 202 Greenwood in Bend.

BACKGROUND AND POLICY IMPLICATIONS:

In preparation for the Deschutes County Courthouse Expansion Project, plans are underway to remove the AJ Tucker Building located at 202 NW Greenwood, from its existing location to a make room for the courthouse expansion. The single-story lava rock building was built in 1919 by Amos Jackson (Jack) Tucker (builder and contractor). The building was developed as his carpenter and blacksmith shop.

In accordance with the City of Bend’s municipal code 10.20.080, the building was offered for sale (with intent to relocate) to the public in March of 2023. No bids were received.

Over the last several months, staff have explored options for removal of the building that could be included in the County’s application to the City of Bend outlined in City code. Those options have included moving the building whole, moving the historic façade, selective demo of the façade for re-erection at an offsite location, and whole building demolition.

The following is a summary of the review of those options:

- **Whole Building Move:** Although it may be possible to move the building as a whole, a structural review by Ashley & Vance Engineering, Inc. concluded that a full seismic retrofit would be required once the building was moved in order to meet Life Safety standards. The review concluded that the cost of relocating and upgrading the structure would outweigh the value of a newly constructed building of similar size/appearance and did not recommend relocating the building for future public use.

- **Select Demolition and Relocation of the Façade:** Pence Contractors reviewed a conceptual plan to selectively deconstruct the historic façade, catalogue the stones, and reconstruct the façade only at the County’s Wall Street parking lot. Conceptual cost estimate: \$450,000 not including additional permitting fees, and architectural and engineering work required for a construction. Cost to demo remainder of building: \$120,000.
- **Select Demolition and Cataloging of Stone Façade:** This would involve select demolition of the façade and cataloging of the stone for possible transfer to a private party or some future use. Cost estimate: \$35,000 to \$50,000 not including consultant fees. The remainder of the building would be demolished. Cost estimate for demolition of remainder of the building: \$120,000.
- **Whole Building Demolition:** Building would be demolished in place and materials removed from site. Cost estimate: \$120,000.

Staff seek board direction to proceed with application to the City for the removal of the building from the site.

BUDGET IMPACTS:

Funding for project-related costs is budgeted for FY 2023 in the Campus Improvements Fund 463 and included in the proposed budget for FY 2024.

ATTENDANCE:

Lee Randall, Facilities Director
Eric Nielsen, Capital Improvement Manager